SUPREME COURT OF THE UNITED STATES.

No. 278.

THE SHIP CIVILTA, HER TACKLE, &c., CASIMIR CASULICH, CLAIMANT, APPELLANT,

vs.

AUGUSTUS B. PERRY ET AL.

No. 296.

THE STEAM-TUG RESTLESS, HER ENGINES, &c., JOHN G. BAKER, CLAIMANT, APPELLANT,

vs.

AUGUSTUS B. PERRY ET AL.

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a U. S. circuit court, southern district of New York, in the second circuit.

AUGUSTUS B. PERRY AND OTHERS, LIBELLANTS,
against
THE AUSTRIAN SHIP CIVILTA AND THE STEAM-TUG RESTLESS, their tackle, &c.

APOSTLES.

Benedict, Taft & Benedict, proctors for libellants, appellees.
Beebe, Wilcox & Hobbs, proctors for the ship and tug, appellants.
Filed October 24, 1874.

1 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The libel and complaint of Augustus B. Perry, O. H. Perry, John Moseley, William G. Moseley, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. W. Gilman, owners of the schooner Magellan, and of George W. Sargent, master of said schooner, against the Austrian ship Civilta and the steam-tug Restless, in a cause of collision, civil and maritime, alleges as follows:

First. That this is an action for a collision, and the said ship Civilta and the said tug Restless are now within this district.

Second. That at the times hereinafter mentioned the libellants were the owners of the schooner Magellan and carriers of a cargo of coal on board of her.

Third. That on the 22nd day of December, 1872, at between two and three o'clock in the morning, the said schooner Magellan was on a voyage from South Amboy to Boston, having on board a cargo of one hundred and seventy-five tons of coal, and had arrived at a point near Hart's Island, in the East River, when she was sunk by a collision with said ship Civilta, then in tow of said tug Restless, the circumstances of which are as follows, as they are informed and believe:

The night was a pleasant one; the moon was shining, and although it was a little hazy, yet vessels could be seen at a great distance, and the wind was light from about south or south with west. The schooner had the lights set which are required by law, viz, a red light on
2 the port side and a green light on the starboard side, which were properly set and burning brightly. Her mate was at the wheel and she had a lookout forward and they were properly attending to their duties. She was heading about northeast, having her booms on her port side, and making about 2½ or 3 knots an hour. The lights of the tug Restless, which was towing the ship Civilta on a hawser, and of said ship were discovered about half a mile off, bearing a little on the port bow of the schooner and the schooner was kept steadily on her course without change.

The tug was towing the ship at the rate of about eight or nine knots an hour, and headed for the said schooner until she was very near to her when she suddenly sheered to port across the bows of the schooner and just cleared her, but brought the ship down upon the schooner. The ship struck the schooner on the port bow by the forechains, cutting into her so that she sank in a few minutes with her cargo and with property of her master and crew, as hereafter stated.

The schooner made no change of her course, and did nothing to cause the collision, and the same could have been easily avoided by the said ship and tug, as it was their duty to do, if they had either changed their course earlier, or had changed it to starboard instead of changing it to port, or had stopped in time.

The said schooner could have been seen in abundance of time to enable said tug and tow to avoid her, and, as the libellants are informed and believe, she was so seen; but if she was not, it was in consequence of the want of a lookout or negligence on his part.

Fourth. That the ship, as they are informed, was in tow of the tug, but was in charge of a pilot, and the collision was caused by negligence on the part of both the ship and the tug.

3 Fifth. That the schooner was worth about six thousand dollars; her cargo was worth about one thousand dollars; the freight was about five hundred and sixty dollars; the master of said vessel had on board and in his charge about four hundred and fifty dollars in money, the freight money of the previous cargo belonging to the libellants, which was lost, as was also property belonging to said master worth about one hundred and eighty-eight dollars, and the crew of said schooner had their clothes, and most of which was lost, valued at about one hundred dollars more, and making the total damage by said collision about eight thousand four hundred dollars.

Sixth. That the said ship and tug are liable for said damage, but have not paid the same.

That all and singular the premises are true, and within the jurisdiction of this court.

Wherefore, the libellants pray that process in due form of law may issue against the said ship Civilta and the said tug Restless, and that all persons interested therein may be cited to appear and answer upon oath all and singular the premises, and that this court would be pleased to pronounce for libellant's said claim with interest and costs, and condemn said vessels therefor, and otherwise right and justice to administer in the premises.

OLIVER H. PERRY.

Sworn to before me this 26th day of December, 1872.
[SEAL, NOTARIAL.] SAMUEL H. VALENTINE,
Notary Public, N. Y. Co.

4 (Endorsed:) 24–424. U. S. district court, southern district of New York. Augustus B. Perry and others ag'st The Austrian ship Civilta and the tug Restless. Libel. Collision, $8,400. Benedict, Taft & Benedict, proctors for libellants. Filed December 26th, 1872.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and seventy-two, by Augustus B. Perry and others against The Austrian ship Civilta and the steam-tug Restless, their tackle, &c. Collision, $8,400.

For the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship and tug or vessel, their tackle, &c., may be cited in general and special to answer

5 the premises, and all proceedings being had, that the said ship and tug, or vessels, their tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants.

You are therefore hereby commanded to attach the said ship and tug, or vessels, their tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 14th day of January, 1873, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the honorable Samuel Blatchford, judge of the said court, at the City of New York, in the southern district of New York, this twenty-sixth day of December, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh.

GEO. F. BETTS, *Clerk.*

BENEDICT, TAFT & BENEDICT,
Proctors for Libellants.

6 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on Saturday, the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and seventy-two.

Present, the Hon. Samuel Blatchford, district judge.

THE STEAM TUG RESTLESS, &C., IMPLEADED, &C.,
asm.
AUGUSTUS B. PERRY AND OTHERS.

And now, John G. Baker, sole owner of the steam tug Restless, intervening for the interest of himself in the said steam tug, &c., appears before the honorable court, and makes claim to the said steam tug, &c., as the same are attached by the marshal, under process of this court, at the instance of Augustus B. Perry, and others, and the said Baker avers that he was in possession of the said steam tug at the time of the attachment thereof, and that the person above named is true and bona fide owner of the said steam tug, and that no other person is the owner thereof; wherefore he prays to defend accordingly.

J. G. BAKER.

7 Sworn to and subscribed this 28th day of December, A. D. 1872, before me.

JOHN A. OSBORN,
U. S. Commissioner.

BEEBE, DONOHUE & COOKE,
Proctors for Claimant.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court

rooms, at the city of New York, on the 31st day of December, in the year of our Lord one thousand eight hundred and seventy-two.

Present, the honorable Samuel Blatchford, district judge.

AUGUSTUS B. PERRY AND OTHERS
vs.
THE AUSTRIAN SHIP CIVILTA, &C., AND STEAM Tug Restless, &c. } 24, 424.

On motion of Benedict, Taft & Benedict, proctors for the libellant, it is ordered, that the notice for all persons to appear and intervene, for their interest in the above entitled cause, be published by the marshal until the 14th day of January, 1873.

SAMUEL BLATCHFORD.

8 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on Monday, the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and seventy three.

Present, the honorable Samuel Blatchford, district judge.

THE AUSTRIAN SHIP CIVILTA, HER TACKLE, &c., impleaded, &c.,
asm.
AUGUSTUS B. PERRY ET AL.

And now, George Slocovich, intervening as agent for the interest of Casimir Cosulick in the said Austrian ship, appears before the honorable court and makes claim to the said ship, &c., as the same are attached by the marshal, under process of this court, at the instance of Augustus B. Perry and others, and the said George Slocovich avers that he, Cosulick, was in possession of the said ship at the time of the attachment thereof, and that the person above named is the true and bona fide owner of the said ship, and that no other person is the owner thereof; and the said Slocovich is the true and lawful bailee thereof, as agent, wherefore he prays to defend accordingly.

CASIMIR COSULICH,
By GEORGE SLOCOVICH,
Agent.

BEEBE, DONOHUE & COOKE,
Proctors for Claimant.

9 To the honorable Samuel Blatchford, judge of the district court of the United States of America for the southern district of New York:

The answer of Casimer Cassovich, claimant and respondent to the libel and complaint of Augutsus B. Perry, O. H. Perry, John Moseley, William Emerson, Calvin G. Peck, and O. M. Gillman, alleged owners of the schooner Magellan, and of George W. Sargent, alleged master, against the Austrian ship Civilta and the steam tug Restless, their tackle, &c., in a cause of collision civil and maritime.

And thereupon the respondent answering alleges and articulately propounds as follows:

First. This respondent, so far as the same relates to the ship Civilta,

admits the several allegations contained in the first article of the said libel, and as to the steam tug Restless he has no knowledge, and he neither admits nor denies the same.

Second. This respondent has no knowledge as to the several matters alleged in the second article of the said libel, and therefore neither admits or denies, but leaves the libellants to make such proof as they may be advised is material.

Third. This respondent denies upon information and belief every allegation contained in the third article of the said libel, except where the same is hereinafter specifically admitted.

Fourth. This respondent upon information and belief denies each and every allegation contained in the fourth article of the said libel.

Fifth. This respondent states that he has no personal knowledge as to the several matters contained in the fifth article of the said
10 libel, but upon information and belief he alleges that the various articles therein referred to are greatly overvalued, and that the damage was not near as large as therein stated.

Sixth. This respondent denies the liability of the said ship for the said damage, and admits that so far as the said ship is concerned the damages have not been paid.

Seventh. This respondent upon information and belief states that on the morning mentioned in the third article of the said libel the said ship Civilta was bound to the port of New York, and was being towed astern of and by the steam tug Restless by a hawser forty-five fathoms long, and with a Hell Gate pilot on board, and with the general instructions from the said steam tug to follow in her wake; that the morning was pleasant with the moon shining, about a two and a half to a three knot breeze from west, and free for vessels bound to the east; that the said tug had her all regulation lights set & burning, and the said ship had the regulation lights set and burning brightly; that the said tug and ship had between two and three o'clock in the morning reached in the neighborhood of Hart's Island; that at that time the master, pilot, mate, and most of the crew of the said ship were on deck, and, as the respondent is informed and believes, the said steam tug had a competent pilot at the wheel and a good and sufficient lookout attending properly to their duties; that the course of the said steam tug was southwest, that being the regular and proper course for vessels at that place bound westerly; that while so proceeding, a schooner, which turned out to be the Magellan, was made ahead and off the starboard bow of the said steam tug, and steering about northeast and about on a parallel course with the said steam tug and the said ship, and upon a course which, if continued, as it was her duty to have done, would have carried her at a safe distance on the starboard side of the said steam tug and ship;
11 that said schooner did pass the said tug, she, the said tug, having kept steadily on her course, and when she had thus passed and when by keeping steadily on her course she would with equal safety have passed the said ship so in tow, she kept away to the right between the said tug and ship, and although as soon as this change was made she was repeatedly hailed from the said tug and ship to starboard she kept on and ran upon the hawser by which the said ship was being towed, and by striking the said hawser and by her onward motion she came in contact with the stem of said ship, she doing the said ship serious damage and sustaining such damage to herself that she sunk soon after; that the instant the change of the course of the said schooner was seen the wheel of the said steam tug was starboarded and she kept off to the left, and the wheel of the ship was promptly starboarded to follow in the wake

of the said tug, and, if possible, avoid the said schooner, but owing to the change of the course of the said schooner the collision could not be avoided, either by the said tug or the said ship; that as the said schooner approached the said ship, and although careful attention was given, no one could be seen upon the deck of the said schooner until after the collision, when they were seen hurrying up from below, only partially dressed, and this respondent denies that there was any lookout upon the said schooner, and if there was any man at the wheel he was asleep.

Eighth. This respondent alleges that the said collision was caused by no fault of those navigating on board the said ship as she was helpless, and steadily followed as directed the wake of the said tug, and he also denies that it was by the fault of the said tug, but alleges that the said collision was caused by those on board of the said schooner and in charge of her navigation, and among other things in not having a lookout, in not having a man at wheel attending properly to his duties, in
12 not seeing the ship in tow of the tug, in changing her course when she had a free wind and not changing back when hailed.

Ninth. This respondent admits the jurisdiction of this honorable court.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and otherwise right and justice to administer in the premises, and that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

G. VALCICH,
Master of Austrian Ship Civilta.

Sworn to before me this 4th day of January, 1873.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

BEEBE, DONOHUE & COOKE,
Proctors for Claimant.
BEEBE, *Advocate.*

(Endorsed:) 24, 424. U. S. district court, S. D. N. Y. The Austrian ship Civilta, her tackle, &c., impleaded, &c., ads. Augustus B. Perry and others. Answer. Beebe, Donohue & Cooke, proctors. Filed January 7th, 1873.

13 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The separate answer of John G. Baker, claimant of the steam tug Restless, to the libel and complaint of Augustus B. Perry & O. H. Perry, John Mosely, William Emerson, Calvin G. Peck, and O. M. Gilman, alleged owners of the schooner Magellan, and of George W. Sargent, alleged master, against the Austrian ship Civilta and the steam tug Restless, in a cause of collision civil and maritime.

And thereupon the respondent answering alleges and articulately propounds as follows:

First. This respondent upon information and belief admits the several allegations contained in the first article of the said libel.

Second. This respondent has no knowledge as to the several allegations contained in the second article of the said libel, and therefore neither admits nor denies the same.

Third. This respondent upon information and belief denies each and

every allegation contained in the third article of the said *said* libel except where the same is hereinafter specifically admitted.

Fourth. This respondent upon information and belief denies each and every allegation contained in the fourth article of the said libel.

Fifth. This respondent has no personal knowledge as to the several allegations contained in the fifth article of the said libel, but upon information and belief, alleges that the several articles therein referred to are greatly overvalued.

14 Sixth. This respondent denies the liability of either the said ship or tug, and further admits that the damages have not been paid.

Seventh. This respondent upon information and belief states that on the morning mentioned in the third article of the said libel the said ship Civilta was bound to the port of New York, and was being towed astern of and by the steam tug Restless, by a hawser forty-five fathoms long, and with a Hell Gate pilot on board, and with general instructions to the said ship to follow the wake of the said steam tug. That the morning was pleasant, with the moon shining, and about a two and a half to three knot breeze blowing from westerly and free for vessels bound to the east. That the said steam tug had all her regulation lights set and burning brightly. That the said tug and ship had between two and three o'clock in the morning reached in the neighborhood of Hart's Island. That at the time the said tug had a competent and careful pilot at the wheel, and a careful and competent lookout, both of whom were attending strictly to their respective duties, and that most of the crew of the said ship were on deck, and that she had all her regulation lights set and burning brightly. That the course of the said steam tug was southwest, that being the proper course for vessels at that place bound west, and the said ship was following in her wake. That while so proceeding a schooner, which turned out to be the Magellan, was made ahead and off the starboard bow of the said steam tug, and steering about northeast, and on a parallel course with the said steam tug and the said ship, and upon a course which if kept, as it was her duty to have done, would have carried her at a safe distance on the starboard side of the said steam-tug and ship. That said schooner did pass the said tug, she, the said tug, having kept steadily on her course, and when she had thus passed, and when by keeping steadily

15 on her course the said schooner would with equal safety have passed the said ship so in tow, she suddenly kept away to the right between the said tug and the said ship, and although as soon as this change was made she was repeatedly hailed from the said tug and ship to starboard, she kept on and ran upon the hawser by which the said ship was being towed, and by striking the said hawser and by her onward motion she came in contact with the stem of the said ship, she doing the said ship serious damage and sustaining such damage to herself that she sunk soon after. That the instant the change of the course of the said schooner was seen, the wheel of the said steam-tug was starboarded, and she kept off to the left and the wheel of the said ship was promptly starboarded to follow in the wake of the said tug, and, if possible, avoid the said schooner; but owing to such change of the said schooner and its continuance the collision could not be avoided either by the said tug or the said ship. That as said schooner approached the said ship, although careful attention was given, no one could be seen upon the deck of the said schooner until after the collision, when they were seen hurrying up from below, only partially dressed; and this respon-

dent denies that there was any lookout upon the said schooner, and if there was any man at the wheel, that he was asleep.

Eighth. This respondent denies that said collision was caused by the fault of either the said tug or the said ship; or by the fault of any one on board thereof; but he alleges that the same was caused by the fault of those on board the said schooner, and charged with her navigation, and among other things in not having a lookout—in not having a man at the wheel attending properly to his duties, in not seeing the ship in tow of the said steam-tug, in changing her course when she had a free wind, and in not changing back when hailed.

Ninth. This respondent admits the jurisdiction of this honorable court.

16 Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid and otherwise right and justice to administer in the premises, and that he may be hence dismissed, with his reasonable costs and charges in this behalf, most wrongfully sustained.

JOHN G. BAKER.

Sworn to before me this 7th day of January, 1873.

JAS. P. LEDWITH.
Notary Public, N. Y. Co.

BEEBE, DONOHUE & COOKE,
Proctors.

BEEBE, *Advocate.*

Filed January 7th, 1873.

17 U. S. district court.

AUGUSTUS B. PERRY AND OTHERS
vs.
THE SHIP CIVILTA AND STEAM-TUG RESTLESS. } Jan'y 8, 1873.

HENRY TRACY, Jr., sworn:

Live at Mount Desert, Maine; followed water 6 years in summer; been mate only this last summer; was mate of schooner Magellan at collision; had come from South Amboy with cargo of coal; at time of collision I was at wheel; had been on deck from one o'clock; collision was about two o'clock and 40 minutes. From 1 to 2 o'clock, I was on lookout; then I went to wheel; when I went to wheel, George Parker, my watchmate, went on the lookout; he remained on lookout from that time to collision; when I took wheel, schooner was little past Stepping Stones; night was clear, but a little haze; moon; wind about S.; course of schooner after I took wheel was N. E.; booms off to port side; whole of main sheet was out. I should judge I was going 2 knots.

I saw lights of tug and ship; made her about a point or a point and a half on my lee-bow; I got hail from lookout, but had seen her before. Hail was, "A steamer on your lee-bow." They were half or three quarter of a mile off. From that time forward I kept watch of them pretty much all the time. I should say they were steering about S. W. by S.; when within 50 or 100 yards off, steamer changed her course and went across my bows to my starboard, to her port; when she changed her course, she hid her port light. Up to that time there had been no change in my course. When she showed on my starboard bow I stepped to

18 gangway and sung out all hands on deck; stepped 3 or 4 feet;

my helm was then about midships; nearly let go of it and then took it again; no change while I stepped; the wheel would not turn itself; I do not know that I held on to the wheel all the time till the blow; no change in wheel from that time till collision; I was steering by compass; my course was N. E.; when the tug showed on my weather-bow there was a hail came, keep off; she was just her length clear of my bow when she hailed; the ship was at that time under my lee, tending a little ahead; I struck hawser about half way from ship to tug; that stopped most of my headway, and ship struck me in lee forerigging; she did not strike square or head on, but at an angle.

(Diagram No. 1 shows how ship and schooner came together.)

Schooner had 5 hands aboard; captain came out of gangway about time the ship struck; the others came immediately after; I lowered boat and we saved a very few things; boat was at davits; then we got into boat and went on tug; schooner sank while we were in the *the* small boat, about 50 feet from stern of schooner; when she sank she was heading about N. N. E.; don't remember seeing Sand Point light or Execution light; boom did not change before she sank. She continued foul of the ship till she sank.

Cross-examined:

Sargent was master of vessel; no relation of mine; I have been with him all time I ever went to sea; he laid up in winter; schooner hails from Boston; captain, from Mt. Desert, Maine; John W. Richardson and George Parker and the other man hail from Mt. Desert; they knock off winters.

19 First voyage in 1872, in schooner, was in spring, near 1st of May; had made 5 round trips (4 to New York and 1 to Boston); I left her at Mt. Desert in Nov., 1871; can't tell the first year I went with the captain.

I am 23 years old; I worked on farm and in woods before I went to sea; I think some of the rest were at sea before I was.

Did not stop at New York on way from Amboy; left Amboy Sunday, about noon; collision was Monday morning, between 2 and 3 a. m.; during the night following the day we left Amboy, we sailed all the way; we passed the battery at 8 or 9 o'clock; tide there was partly down then, running ebb against us; we went through the gate on the slack-tide; at collision tide was flood; not very strong; it was more than half tide; it was against us; about strength of tide. After getting through gate, we did not get much tide with us at all; I speak of the tide from what I know it must have been, and not from recollection, except I recollect it was low water, slack, going through the gate; not much tide from Gate to Throg's Neck; I should think 5 or 6 miles from Gate to Throg's Neck; went through Gate at 10 o'clock; at 1 a. m. we were one-half to three-quarters mile to E. of Throg's Neck when I came on deck; I went below a little past 10; before I turned in at 10, I was around decks, and had wheel part of time. Capt. had it through Gate.

JANUARY 9, 1873.

I came on deck very near 1; changed watches then that night; that was not the regular time; changed whole watch then; Clark, Parker, and the captain were on the deck till 1; from 10 to 1; when I came on deck I was on quarter till captain gave me orders; then I went forward abreast of foremast, abaft forecastle deck, walking back and forth, 10 feet from forecastle deck to range of foremast; did not go forward of after part of forecastle deck, might have walked back of fore-

20 mast; had deck load from forward part of after-house to mainmast; none forward of mainmast; it was 18 inches deep; I staid forward from 1 to 2; then I came aft and took the wheel; between 1 and 2 sails jibed twice, and I trimmed jib; I believe my course then was N. N. E. We were then between Throg's Point and Stepping Stones; besides that don't know I did anything except walk back and forth; between 1 and 2 sails jibed once; believe twice between 1 and 2; then I went aft to wheel; steered with wheel; stood up steering; we had a quarter-deck that ran to after part of house from stern; it was a little over 2 feet high; I stood on quarter-deck in steering; on deck itself; when I took wheel, she was heading N. N. E.; I took wheel and hauled her to N. E. right away, steering by compass; continued that till made the other vessel; did not change certainly before made the other vessel; heading N. E. when made the other vessel; I made her before my attention was called by lookout; I first saw lights on steamer and light on foreyard of ship; steamer's lights I first saw were a red and green light, and white light at stem; 3 distinct lights; I saw lights aloft on steamer besides the 3 other lights on steamer, and the light on foreyard of ship; don't recollect then seeing any colored lights on ship.

We had mainsail, foresail, jib, flying-jib, and main gaff topsail; we also had not set fore topsail and outer jib; she was 90 to 100 feet long; up to time tug changed, I had seen no colored lights on ship; when I first saw lights, I thought it was a tug towing a vessel.

I saw port-light on ship when I came alongside of her in tug after collision; up to collision saw no colored lights on ship.

(Man shown.) Saw him on tug (Grafton Milliken); did not say to him on tug that I had not seen ship at all.

21 I don't think tug was out of my sight from time I first saw her lights till collision. When I first saw her she bore a point or a point and a half on my port bow. I think she was steering across my bow when I first saw her. I did not think she was going to cross my bow till I saw her hide her port light. I think when I first saw her she was steering SW. by S. She was then one-half or three-quarter mile off. She kept that course until she changed to go across my bow, when she was 56 or 100 yards off.

When she changed her course she did not bear quite a point off my lee bow. She was then 50 to 100 yards off. I could see she changed her course, the night was so clear. When she shut in her red light I was certain; up to that time I was not certain; loss of sight of her red light satisfied me she changed.

I should say ship had 30 or 49 fathoms of hawser; fathom is 6 feet.

When I saw her change I did not do anything with my wheel. Don't think I left wheel when she changed. I saw her in an instant on my weather bow. I left wheel when I saw her on my weather bow; she had neared me nearly one-half from time she changed until she showed on my weather bow.

Lookout reported her very short time after I saw her; he said steamer on your lee bow; that is all I heard; he said nothing I did not catch. I don't remember anything said between us before collision. Don't know I noticed him. Can't say where he stood. Did not hear whistle from tug before collision.

Heard hail, I supposed from tug, when she showed out by weather bow; was not quite abreast of her when I heard hail. At time of collision schooner was heading NE. at striking.

22 Did not pass nearer than 30 or 40 feet to tug; when I passed tug she was heading around as far as to S. I should say head

of ship changed some, not over 1½ or 2 points. My best judgment is she changed from 1½ to 2 points.

Redirect:

Forecastle deck is about 2 feet above the other deck; from where I stood at wheel I could see forward except right over forward part of house. I noticed lights on Sand Point and Execution Rock; saw them about time I came on deck; did not steer with reference to those lights; steered by compass; while at wheel noticed how those lights bore; Sand's Point bore a little on weather bow, and Execution light a little on lee bow. I was heading between the two; near half way between.

I should say light on foreyard of ship was hanging nearly midships.

Before tug changed, if she had kept on I think she would have hit us near forward. I thought she would change and go under my lee; she bore under my lee and I supposed she would go that way.

When I saw port light of tug go out of sight it bore little on my lee.

Recross:

The lights bore as I have stated (Sands & Execution); from time I hauled to NE. they bore very near, one a point on one bow and one a point on the other, when I noticed them at time I took NE. course; did not notice them afterward. Collision was nearly in mid-channel, channel a mile wide; collision was ½ mile off Hart's Island; was two-thirds of way from Stepping Stones to Hart's Island.

23 GEORGE PARKER sworn:

Live at Mount Desert, Maine; age, 23; am carpenter and go to sea; followed sea for 5 years, 2 or 3 trips a season, sometimes more than that; had been on Magellan about 2 months. I was a hand on board; came on deck at 1 o'clock; took wheel from 1 to 2, then relieved by mate, then went forward on lookout; stood between range of foremast and forecastle deck; wind on my lookout about S.

Saw lights of tug and ship; when I first saw them they bore 1 to 2 points on lee bow; from ¾ to mile off when I first saw them; saw side lights on tug and on stern, and 1 light aloft on tug, I think; noticed 1 light on ship; I hailed mate; I told him there was a steamer on lee bow. I staid there; made no other hail.

I saw change in lights; change I saw was when she went across our bow; none before that; she hid her port light when she was 50 or 75 or 100 yards off; the light at that time bore a point or more on our lee.

Heard hail from tug after she went by bow; hail was keep off; I should say no change in our course from time I first saw lights till collision, by way Sand's Point and Execution lights bore; ship struck us in port chains forward, ship's stem.

(Diagram 2 shows how they struck.)

At blow I was pretty near aft, alongside house; I left forward when she was 20 feet off, and I saw there was going to be a collision; captain and other hands was not on deck before blow; we got what clothes we could and left in boat; we were in boat astern of schooner when she sank; I should say she was heading about NNE. when she sank; I did not notice at that time Sand's Point or Execution lights; booms did not jibe after blow; they were on port side at collision.

24 Tug passed about 30 or 40 feet to our starboard.

Cross-examined:

I said steamer on lee bow, and he answered back that he saw her; set a barrel on house and main boom would swing over; main boom 5 feet from rail; rail 2 feet high from main deck; fore boom 6 feet from rail; rail there 2 feet high.

The jibs were trimmed to port, trimmed to rail, 3 feet from rail or more; rail there about 2 feet high; that was at forerigging.

Never lost green light of tug; did not lose red light of tug till change; judged tug's wheel put to starboard by losing red light.

Did not leave place forward till tug 29 feet off.

Can't tell whether ship changed course; did not see colored lights of ship till I came alongside of her after collision; then saw ship's red light; went into after cabin to get clothing; did not hear any whistle from tug.

Redirect:

I saw our lights three minutes before collision; they were set and burning.

Recross:

I was standing 10 feet forward of foremast when I saw them; I saw port light from port side, leaning on port rail; as soon as I saw tug's lights I looked at our lights to see if they were burning, first one side and then the other; leaned over rail.

There was a flash light on our vessel; knew we had one; never
25 saw it used on our vessel; did not attempt to use it this time; it was in steerage in forward part of house.

GEORGE W. SARGENT sworn:

Live at Mount Desert; captain of Magellan at collision; followed water 25 years; master 16 years; 35 years old; master of Magellan 2 years; was going from Calais to New York and back to Boston; left South Amboy and back to Boston; cargo coal.

Called up mate nigh 1 o'clock, staid on deck 10 or 15 minutes, then sat below 10 or 15 minutes or more, then came on deck and stuck main boom out as far as sheet would let it, struck out all sheet we had, then went to state room in house on deck and got into berth; when I let all sheet out wind very light and S. S. W. about right after us; vessel was then about one-half to 3-4 mile from Throg's Point light to northward and eastward; I noticed lights on Sand's Point and Execution Rock; Execution bore about a point on weather bow, and Sand's Point about two points on weather bow, both on weather bow at that time; vessel then headed N. N. E.; before I pushed out boom it jibed; window in my state room; I looked out of it after I got into my room; 10 or 15 or 20 minutes after I laid down I looked out to see she was going all right. I saw Sand's Point and Execution lights, and saw what I thought was the buoy on the Stepping Stones on our starboard bow about 4 points, about 100 or 200 yards off; a moon; did not go to sleep; I tried to and couldn't.

About 5 minutes before collision I rose up and looked out of window a second time ahead; window on side; stuck head out, shoved window up both times, and shut 't between the two; second time saw vessel was in channel and going along all right; saw Sand's Point light a lit-
tle on weather bow just by forerigging, and Throg's light a little
26 on starboard quarter 6 points abaft of beam; did not see Execution light; then I shut window down and laid back; next

thing I heard "all hands on deck;" rushed out; they had just struck then; mate called all hands on deck; I was in my pants and vest and stocking feet; did not stop to put anything on; when I got on deck saw ship under lee bow and Sand's Point light was just nearly ahead, on starboard side, between our jibboom and forerigging; I standing aft with hand on companion way; mate was aft alongside of wheel; don't recollect that I saw Parker; I noticed pretty nearly how vessels were together.

(Diagram 3 shows how they struck.)

I saw how things were and went for my wallet below; hunted for it; they sung out she was sinking; I got up, ran forward, saw water running in, then went to cabin and hunted for wallet again; then got some things and came up, and then went back and got more things and got into boat; got 50 feet astern and she sank; she did not separate from ship before she sank.

Booms of schooner did not jibe after blow; while in boat noticed Sand's Point light while I was astern; it bore about 2½ or 3 points on starboard bow of our vessel when she sank; I was astern about in line with keel of schooner when she sank; she was heading to port of Sand's Point light when she sank about N. N. E.; then I went on tug and she got alongside of ship and towed her so.

Afterwards saw ship in New York & saw on her stem, on port side, 6 or 8 inches above water line, mark like a bolt making hole in wood of stem, tearing it out, on port side; no mark I could see on starboard side; ship's bowsprit broke right in knight head; mark of blow ten or twelve feet from knight head; cut water above mark was broke 6 or 8 feet above bolt mark; no mark between the two.

27 Cross-examined:

Vessel hails from Boston; no part owned in Mount Desert; I own no part of her; I was sailing her on shares; never sailed for these owners on any other vessel; Magellan 101 tons measurement; she had 175 tons of coal; could carry 5 more in summer; had 4 tons on deck that was between main mast and forward part of after house; was not as high as rail; was 15 or 18 inches high; she steered by wheel, stationary; I steered that night standing on starboard side; booms not on port side; while I was steering wind was about W. till got through gate, then died away and settled to S. or S. S. W. at Throg's Point.

Magellan had after house about 14 or 15 feet long and about 14 feet wide; vessel 23 feet beam; holds her width all through; gangway between house and rail, about 2½ feet wide or 2; rail there about 2 or 2½ feet high; between this house and taffrail was 8 or 9 feet; wheel 2½ feet from house; one end of wheel sat on taffrail and other end on staunchin or brace; my state room was on starboard side; only one state room; berths in cabin; steerage is in forward part of house; house wider forward than aft; no break in it.

Galley lower than house; man can stand in galley; galley 7 or 8 inches lower than house where it joins house; galley slants downward to forward; galley about 5 feet square; doors to steerage each side of galley; mainmast forward of galley; 14 or 15 feet forward of galley; from mainmast to foremast 22 or 23 feet; from foremast to forecastle deck 5 or 6 feet; forecastle deck about 10 feet long.

I went forward as a lookout just after mate turned in at 10 o'clock; remained on lookout till 1 o'clock; did not take wheel between
28 10 and 1; mate's watch would be at 12, but I did not call him till 1; I went aft and called him; remained aft 10 or 15 minutes and then went below; mate was forward when I went below.

I wasn't asleep and hadn't been; had asthma very bad; heard no call till I heard all hands called; booms were on port side.

Redirect:

Man at wheel can look over house; lights on our vessel all right and burning nicely while I was on deck.

CLARK PARKER sworn:

Live at Mount Desert; 25 years old; brother of George Parker; was hand on Magellan at collision; was turned in at time in steerage; the steward was there with me; was asleep; had been an hour and a half; first I heard was hail "all hands on deck;" went on deck as quick as I could; found schooner under ship's bow; then went below and got some traps; then came on deck; then went down for some more; did not go foreward; did not help get boat down; went off in boat with the rest; did not notice any lights; booms of schooner were on port side when I came on deck; no change in booms before she sank.

HENRY TRACY, jr., recalled:

At 2 o'clock when I left lookout our lights were burning bright; that was last I saw of them; noticed both of them.

Cross-examined:

They were in fore-rigging; we had a torch-light in steerage; did not use it or attempt to use it that night; have used it a number of times.

29 DEFENCE.

JAMES FRANKLIN sworn:

Live in Jersey City; 28 years old last November; business is steamboat piloting; followed water 13 or 14 years; been licensed pilot last 6 years; was on Restless at collision as pilot; attached to her 2 or 3 months as pilot and acting captain, she being in towing since I on her; she is second class boat in size; been towing through Hell Gate for last 6 years; understand navigation of Gate; had taken Civilta from New Haven; she was partly in ballast; she is a ship; was bound to New York. It was a bright, moonlight night, pleasant and cold; saw schooner before collision; I was in pilot house at time at wheel; I had in pilot-house with me a deck hand or mate and assistant; they were keeping lookout and attending to lights to see they were burning; pilot-house 12 or 13 feet from stem; about 7 or 8 feet above main deck; can't see over bow on deck; I was towing Civilta on hawser 45 fathoms long; she was following aft of me in my wake. When I first saw schooner, I had reached about 500 yards to eastward of Hart's Island Point; I was at wheel; had been there from Sand's Point ½ hour; course about 300 yards to S. of Hart's Island Point; was steering S. W. by compass, compass in good order, spirit compass, wind about S. S. W. to S. W., about a 3-knot breeze; was towing ship about 7 miles an hour; when I first made Magellan she bore about one point, or 1½ on starboard bow; she was 700 yards off probably; moon shining brightly; saw her sails and shape of her; saw no lights on her from time I first saw her till she was sunk. I should judge she was heading about N. E.; I did not lose sight of her from time I saw her till collision; she passed my bow; she passed to right of me, 60 to 100 feet off of me; she was then changing her course as she passed me; before that she was going N. E.; I was steering S. W.; I had hold of wheel all the time; I made no change from time I made

schooner till she passed by me. If schooner had not changed she
30 would have gone clear 60 to 100 feet; ship was following directly in wake, no other vessels in sight.

As Magellan passed I noticed change in course; she down her helm and came on to hawser between me and ship; about 15 fathoms ahead of ship; she was about abreast of my engine room when I saw that change. When I saw that change I blew five whistles and hallooed to keep off, that I had a ship in tow; no attention paid to hail or whistles; when I saw her change I put my wheel to starboard; up to collision I had changed from S. W. to S. W. by S. I left pilot-house and ran aft to hurricane deck, and saw Magellan turn in about 50 feet from my stern; brought her starboard side towards me; her booms were off on port side; saw no one on her deck at that time; stood there till schooner sinking.

Hawser parted; first saw somebody on deck after collision; they appeared to be coming from aft, running forward, some lowering away boat; ship altered course as I altered mine; I looked back; schooner was heading about S. E. when ship struck her; sank about five minutes after collision; crew of schooner got into boat and got on my boat and came on with me.

Captain had no hat or coat or shoes; then I took ship on starboard side, to put her to dock in Brooklyn on ebb tide; usually tow on hawser thro' sound; I was in position to see lights if schooner had them; I saw none.

Cross-examined:

Tug about 75 feet long, hawser about 45 fathoms long; was towing her about 7 miles through water, tide flood with us, about 1 or 1½ miles;
had just passed to left of a vessel off gangway, tug-boat Game Cock
31 with barges; she passed to my starboard; saw schooner plain about 4 or 5 minutes after I passed Game Cock; schooner struck hawser about 15 fathoms from ship; there was a pilot on ship; I got no orders from him; I had charge to Sand's Point; after that she was in charge of Hell Gate pilot; that was his business; the pilot on ship was a Hell Gate pilot; the ship changed as much as I did, about a point; when my bow lapped schooner's bow, the vessels were 60 to 100 feet apart. At time of collision I had changed course about a point; I noticed light on Throg's Point before I got to schooner; it bore a little mite on my port bow.

I recollect captain of schooner coming into pilot-house and having conversation with me. I asked captain if he didn't see ship; he said no; he was below. I don't recollect saying it was lucky I didn't hit her.

ALEXANDER BANTA sworn:

Live City Island, to W. of Hart's Island; 30 years old; am Hell Gate pilot; followed piloting 12 years; been Hell Gate pilot 6 years; know ship Civilta and steam-tug Restless; was on the Civilta at collision; boarded her in New Haven harbor; went up there to come down in her; left New Haven about 5 p. m.; I turned in near Stratford; came on deck about 11½ or 12 o'clock. After that was all time on deck forward of mizzenmast, 10 feet forward; saw men on deck; captain was called at Sand's Point; saw him after that; I was close to helm all the time; I was being towed on a hawser they said 45 fathoms; she steered directly after tug as near in wake as she could; I saw schooner before collision; there was lookout forward on ship and men at tiller to steer her; she

had red port light and green starboard, and white mast-head light, letter signal for being towed; tug had five lights, red and green, and bow light, and 2 high white lights aft, one above the other.

When I saw schooner we were 600 yards to southward and eastward of Hart's Island; at that time tug and ship were heading S. W.
32 by compass; that was proper course there; I was walking across deck from starboard to port; I was on starboard side when I first saw schooner; when I first saw her sails she bore about a point and ½ on our starboard bow; her sails were the first I saw; schooner was then, I should think, about 600 yards to westward of tug; the regular course from abreast of Hart's Island for her is N. E.; I did not observe her after that; saw no lights on her up to time she sank; first thing after that was I heard five whistles, and saw schooner luffing sharp; heard hail to keep off, then helped heave tiller hard to starboard; then ran forward, and by that time they struck; up to time of whistles I noticed no change in tug; when I got forward schooner was heading about S. E., that is when we struck her I was about 35 feet from stem of ship at blow; I was going on starboard side; I looked over on to schooner forward, and saw no one forward at that time; our ship was heading S. W. by S.; only changed one point; she was still in wake of tug; we were being towed about 7 miles an hour; as she struck the hawser she fell off a little; if there had been no hawser there the ship would have struck her amidships.

(Diagram A shows how they struck, calling top of paper east.)

After I heard the whistles I heard hail from tug-boat, telling him to keep off, I've got ship in tow. When I last saw schooner before I heard whistles, she was 100 yards from tug, ahead of tug, coming to E. She had not then changed. I thought if she kept course she would pass 60 feet off. I did not notice particularly to see if I could see lights on schooner; I did not observe any at no time. I saw ship after that.

Cross-examined:

I recollect a vessel passing us on our starboard side before. It
33 was my place to hail tug if he course not suitable. I gave no direction to tug; not close enough to give it. I was pilot of ship from Sands Point.

Blow was nearly square; angled little forward on schooner, if anything. Ship was swinging to port by starboard helm.

The sailors on ship were foreigners. Austrian ship.

GRAFTON MILLIKEN sworn:

Live on Block Island; age, 19; follow water for a living for last 5 years and over; been on steam tugs about 4 months; on steamer on sound about 4 years. Was on Restless at collision; was deck-hand. It was a clear morning; starlight; moon up. I was in pilot-house, looking out of window. Another man there; Isaac F. Parks. Pilot-house about 12 feet from stem; windows all around. Had taken position as lookout at 11 o'clock. Could see compass from where I stood; it was 1½ to 2 feet from me. Saw schooner before collision. Was steering S. W. when I made schooner. Wind about S. S. W.; 2½ to 3 knot breeze. Ship was steering right in our wake. When I first made schooner she was about a point and a half on our starboard bow; about 600 or 700 yards ahead of me. I saw her sails, and hull, and masts. She seemed to be heading about parallel course with us; N. E. Kept her in view from time I made her till she sank. Saw no lights on her at any time. She passed on our starboard side, about 60 feet off. When she passed our stem—when she lapped us—she seemed to be steering same course.

No change in course of tug till schooner lapped us. She was in plain sight when she passed. Saw no one on deck. Booms on port side. I saw change in her course. When she passed by our stern she seemed to come towards our hawser by a pretty quick turn. I was looking at her when that change was made. I heard five whistles from tug—loud whistles. Our captain sung out to keep off, for he had a ship in
34 tow. Heard no answer. Schooner struck hawser about 30 fathoms astern of tug. I was then in pilot-house looking at schooner; windows open. I saw schooner and ship come together. I was still in pilot-house. I should judge schooner heading about S. E., and ship about S. W. by S. I first saw somebody on deck of schooner after she struck. Saw nobody forward. I did not lose sight of schooner from time I first saw her till collision. I looked, but could not see any lights on schooner.

After schooner sunk men came on board our vessel. Had conversation with mate in our forward cabin. I asked him if he saw ship. He said he did not.

I am still on the Restless. Park was acting as deck-hand.

Cross-examined:

I had been in pilot-house since 11 o'clock; had left only to look at our lights. Had been steering. I was in pilot-house when I passed Execution Light. Passed it about 150 yards off. No change in course from Execution to Hart Island. Can't say if change at Execution; was not steering after passed Execution. I stood abaft of wheel in pilot-house. Parks had not steered since passing Execution. We were both standing.

I did not notice light on Throg's Point. I noticed course of our vessel's compass. When schooner passed our stern captain put wheel to starboard hardly any time after that. I looked at compass when schooner was at our stern, and before she changed, and we were then heading S. W. She was then 50 or 60 feet off.

When I first saw schooner nothing said in pilot-house that I recollect. I did not hear any question as to whether she would go ahead of me.
35 I saw the mate in our cabin. Can't say if captain there; I think the other two were present; Parks was present. This was an hour or one and a half after collision. We were all talking to mate. I asked him, did you see the ship? He said he didn't. Don't recollect anything else of the conversation. I was in my bunk at time of conversation. It was port forward bunk. Parks was in starboard bunk, after side. We had just come down below.

JANUARY 10TH, 1873.

JOSEPH VALCICH (sworn through an interpreter—Vincent R. Frank sworn as an interpreter):

Lives in Austria; Fiume; age, 40; ship master; followed water 29 years, nearly; been master 14 years; officer for three years before that. Belong to the Civilta now. Austrian flag. Belongs to Fiume. Attached to her 5 years. Went from Alexandria, Egypt, to New Haven. Brought part cargo to New Haven, and part to New York. Left New Haven December 22d, Sunday, at 4.50 p. m., in tow. Steam tug Restless towed me. Before leaving New Haven harbor he was alongside; after that he took me astern. When he began to tow I was 44 or 45 fathoms astern. I was on deck at collission. I had been on deck about three-quarters of an hour. I had on deck a pilot walking from one rail

to the other, myself and two besides—Polidor Dik, seaman, and George Rosa, seaman. Mate was in cabin smoking at collision; before that he had been on deck. During the three-quarters of an hour I was all over deck. Dik was on lookout; Rosa was at wheel. Had no sail on. When I came on deck we were steering S. W. I looked at compass and saw we were steering S. W., and then went down into cabin and looked at chart to see if I was going proper way. Tug was right ahead. I had green and red lights, and white light on foremast. Tug had
36 lights. I saw schooner before collision. When I first saw her I was on starboard side forward. The schooner was a little on starboard side of tug. I saw schooner's sails first. She was coming towards N. E. I kept looking at her. I saw no lights on her up to time she sank. She bore nearly one point off my starboard bow when I first saw her. I thought her 600 or 700 yards off of tug when I first saw her. I saw schooner alter his course. I was on forecastle when change commenced, near to rail. Schooner altered his course more to south. She changed when she had got nearly past the tug. She passed to starboard side of tug. She passed about 80 feet from tug. If she had kept course she would have passed ship at same distance. She was going N. E. Opposite course to ours. Up to change of schooner's course tug had been running S. W. I steered after him. Sheer of schooner was quick. When schooner changed tug blew 5 whistles, and hailed something to schooner. My man, lookout, hailed something. I hailed—schooner, ahoy; what you do? Schooner changed from going N. E. to going S. E. Schooner struck our hawser about 12 fathom from ship. When schooner changed tug kept off one point, and I then starboarded one point. When I starboarded, schooner was going across my bow. I was on forecastle when schooner struck hawser. I was about 18 feet above water to my feet. I looked to see, and saw nobody on her deck. I first saw somebody on her deck after she struck. I saw three or four men, half dressed, come out of cabin; they went astern and got into boat. There was no change in tug or ship till schooner changed her course. My ship changed one point towards S. on starboard wheel. At blow schooner was heading about S. E.

(Diagram B shows how they struck.)

My vessel was damaged; broke bowsprit, jibboom, and head rail on starboard side; hurt cut-water, but not stem.

37 Cross-examined:

My ship is 500 tons registered, nearly; was bringing to N. Y. 55 tons of iron and 4 of coffee, and 6 or 7 tons of other merchandise; had no ballast besides; mate's name was Benedetta Stauger. He left deck a little before I came on deck. I came on deck about 3-4 hour before collision. I looked at compass and chart when I came on deck. I was standing aft when I heard whistles of steamer; then I looked forward and saw my *my* pilot put my helm to starboard, and then I went forward; the pilot gave order to change my helm. I saw pilot take hold of tiller and help man to put it to starboard, and then I went forward. Before pilot went to my tiller, I saw that tug had changed her course; my course was changed only 1 point, because there was not time. When I got to forecastle, schooner was astern of steamer about 20 fathom, nearly 1-2 way between tug and ship—a little more towards steamer; she had not reached the hawser; hawser broke; I hauled the piece on board; it belonged to ship; from the bits there is 12 to 15 fathoms of it.

Redirect:

I was on forecastle when I saw schooner change; the schooner changed her course after I heard the whistles of tug, and after I had got forward. When I heard the whistles, schooner was heading about NE.; the tug went off to the S. first—before the schooner did. I was running forward when tug changed; I was on starboard side on forecastle when schooner changed.

POLIDOR DIK (sworn through interpreter):

I belong to Brussels, Belgium; born in Flanders; about twenty years old; followed water four and a half years; was seaman on Civilta; was on look-out on forecastle. I went there at two o'clock and staid there till schooner sank. While I was on forecastle, ship was going
38 right after steamer. I saw schooner first ahead of steamboat on starboard bow. When I first saw schooner, she was about twenty or thirty fathoms from tug. When I first saw schooner, she was heading NE. I saw schooner pass tug ten fathoms to starboard of tug. After steamer blew whistles, then schooner altered her course to S. When schooner changed, she was a little astern of steamer. I saw tug change to go more to S. Steamer changed after schooner changed. I saw schooner strike hawser about ten fathoms from ship; saw no light on schooner. I did not see any one on deck of schooner till she came right across bow; then I saw man come out of cabin in stocking feet. (Diagram C shows how they struck.)

GEORGE ROSA (sworn thro' interpreter):

Twenty-two years old; about twelve years at sea; know ship Civilta; belong to her; been on her about five months; born in Archipelago of Greece; was on Civilta from New Haven to New York; remember collision with schooner. I was at tiller; she steers by tiller. I went to tiller at two o'clock and steered till four. I steered right straight after steamer. Those were orders from pilot and captain. I heard whistles from tug. I was steering SW. when I heard whistles following straight after steamer. When I heard whistles soon after that, I saw schooner crossing our bow; then I was ordered to put helm to starboard, and pilot helped; the schooner was then crossing my bow. I heard crash; at crash ship had changed about a point towards S. I remained at wheel.

Cross-examined:

The pilot gave me order to change helm. I did not see schooner before I heard the whistles. I saw steamer from where I stood. I saw change in steamer when schooner got across my bow.

BENEDETTO STAUGER (sworn thro' interpreter):

39 Age, twenty-eight; born, Morosca, in Austria, near Fiume; followed water sixteen years; been officer eight years; now attached to ship Civilta as first officer; been attached to her about one year and ten months. I was on her on voyage from New Heaven to New York. We steered right after steamer; when the schooner and ship actually struck, I was on forecastle; before that I was in cabin, smoking; I had been in cabin about twenty minutes. I was on deck all night before that; when I went below ship was going SW. While smoking below I heard whistles of steamer; then I came up, and as I came out looked at compass and then went forward; ship was then

heading SW. I went directly forward; I ran; I saw schooner right astern of tug, crossing; schooner was about half way from ship to steamer. I saw schooner strike hawser at ten to twelve fathoms from ship; it broke hawser. I saw schooner's deck. It was clear; did not see anybody on deck of schooner. After they struck I saw two, three, or four come out of after cabin. I saw no lights on schooner except on her cabin; none in her rigging. I was standing on forecastle when they came together. I was on starboard bow, leaning over rail.

(Diagram D shows how they struck.)

I call ship SW. by S., and schooner E. SE.

Cross-examined:

Captain was on deck some time before I went down to smoke. I went forward on port side part way, and then crossed to starboard; did not see tug till I got to forecastle; when I got on forecastle, tug was right ahead and keeping for S.; when I got forward, schooner was about 20 fathoms from ship.

JANUARY 13, 1873.

ISAAC F. PARKS sworn:

40 Reside in Jersey City; age, 33; deck hand; followed water on tugs principally; been so about 19 years—15 years around New York; know the tug Restless; was attached to her December 22 last; morning of that day was in Long Island Sound, bound from New Haven to New York, towing ship Civilta astern by hawser. I saw schooner Magellan that morning. I was in pilot-house when I saw her; pilot-house about 12 or 13 feet from our stem. My business in pilot-house was helping to steer and lookout. Captain and Milliken and I were in pilot-house. I had gone into pilot-house at 11 p. m.; I did not leave it before collision; glass all around; before I saw schooner we had been heading SW.; ship heading the same; when I first made schooner I made her on my starboard bow about a point and one-half, about 500 to 600 yards off; I saw sails and hull; nice moonlight morning. She was bound eastward. I suppose her course would be NE.; that is her regular course there; it was abreast of Hart's Island. I kept her in view till collision; saw no regulation lights on her; there was a change of course of schooner before collision; she changed when off my starboard quarter; she passed from 50 to 60 feet to my starboard; she would have cleared ship if she had kept in her course; she made change by port helm; she was past us going by when she sheered. I saw her deck when she passed; saw nobody on her. We did not change till we passed schooner. When she came up abreast of us, we were on SW. course. When schooner changed, we starboarded and changed about a point and a half. Captain went out aft; we gave five whistles; captain hailed first and I next; captain sung out to them to starboard wheel—that we had got a ship astern; I sung out the same; we changed about a point and a half before ship and schooner came in collision; I did not see them come together; heard crash; I was keeping the boat steady; when pilot left, I took wheel; captain put wheel to starboard and then left, and I took wheel. Before schooner ported, I
41 should judge we were towing ship between 5 and 6 miles. I am still deck-hand on Restless; born in Philadelphia.

(Mate of schooner shown.) Have seen him before. I was present at conversation in our forecastle between mate and me and some others of crew. I heard him say he never saw ship at all. I think I asked him, and he said he didn't see ship at all.

Stopped tug after collision.

Cross-examined:

Pilot rang to stop; he rang the bells in the pilot-house, as schooner was passing; we whistled first, and then starboarded; then schooner struck hawser. After that, pilot rang bells and then left pilot-house.

I was on port side of wheel; pilot was on starboard side; Milliken was on starboard, behind captain. Captain said, "Hard a-starboard your wheel; we've got a ship astern." I said the same. I did not hear him say keep off.

Pilot took wheel at Captain's Island; it is 6 or 8 miles E. of Sand's Point.

Conversation with mate was in forecastle; I was sitting in starboard bunk aft. I did not say to mate in that conversation that I said to captain I thought that schooner was going ahead of me, nor to anybody; ship's lights were talked of; mate asked about them, and I said they were all up. The mate and I and Milliken and two others were there. No change of course of tug between Execution Light and Sand's Point, to my knowledge. I was at wheel; east of Execution Rock and Sand's Point our course was still S. W.; had been all the way from Norwalk S. W., or a little to southward of it; recollec' passing Execution
42 Rock; am positive no change of course there. The captain was at wheel when we passed Execution Rock. I got no orders from Hell Gate pilot that night, nor did any of us. East of Execution Rock and Sand's Point we steered to run between those lights. He gave me the course at Norwalk to steer S. W. I steered that course, except, perhaps, a little to southward, all the way.

JAMES FRANKLIN recalled:

There were bells rung on tug. I rung one in the pilot-house to slow, then I ran aft on hurricane-deck and rung one bell to stop. When I rang to stop, hawser had not quite been struck. I went to wheel between Captain Island and Sand's Point. Captain Island is 8 miles east of Execution and 10 miles from Norwalk. Before reaching Execution Rock we had been running W., S. W. from Stratford Point; that is 15 miles W. of New Haven light. Stratford Point is about 20 miles east of Norwalk; very near to Execution Rock changed to S. W., about ½ mile or mile east of Execution Rock changed to S. W.

Cross-examined:

I was headed right in between the two lights—midway—when there, and a mile to east of Execution light I changed from W. S. W. to S. W., by my compass. After that I did not change at all, and ran S. W. up to collision.

FOR LIBELLANTS.

HENRY TRACY, Jr., recalled:

Recollect talking with Parks in forecastle of tug. He told me that he told captain, "I believe that schooner calculates to go ahead of us." Captain says, "I guess not." Parks said, "I am afraid she is."

No one asked me in forecastle if I saw ship; did not tell any
43 one I did not see ship. At blow our sails were full—no difference between them then and what they were before we reached tug.

I heard conversation between Captain Sargent and Captain Franklin in pilot-house of tug. "Captain Franklin," said Captain Sargent, "I suppose there will be a lawsuit about this." My captain said, "I don't know whether there will or not." *Captain of tug said, "I'm glad I*

cleared you, for that will fetch the lawsuit between schooner and ship." Our captain asked him if he wasn't accountable for damages; he said, not when he towed on a hawser, for he was under charge of the ship, and the ship had a pilot aboard.

(Motion to strike out all above underscored. Motion denied.)

I heard a hail; supposed it to be from tug. I did not make any change n helm.

GEORGE W. SARGENT sworn:

I had conversation with capt. of tug in pilot-house of tug. I went into pilot-house and said to him——

(Objected to; objection overruled.)

I said, "This is a bad affair." He said, "Yes, it is." He said he supposed there would be a lawsuit, and he was glad or lucky he didn't strike schooner, as that would fetch lawsuit between schooner and ship. Says I, "Ain't you responsible, towing on hawser?" Says he, "No; not when they have a pilot aboard."

(Motion to strike out all of the conversation; motion denied.)

I was in forecastle at conversation. Parks said to one of his shipmates, "Our watch was out;" that he hadn't turned in; then Parks said to same man, "I don't believe they saw ship at all." No answer made by my men or anybody to that.

44 I heard in forecastle a conversation between Parks and Tracy.

(Objected to.)

Parks said he saw schooner coming, and told capt. he thought schooner was intending to go ahead of him, and capt. said, "I guess not," or "think not."

When I came on deck our sails were all solid full.

Going 2 knots with schooner from time helm begins to change it would take some 2 minutes to change from N. E. to S. E., with wind S.

No mark on extreme forward end of ship's stem.

Cross-examined:

Ship hit schooner in port fore-rigging.

CLARK PARKER recalled:

Did not hear conversation in forecastle about this case; never in my presence was question put to Tracy as to whether he saw ship. I never heard anything said about not seeing ship.

GEORE PARKER sworn:

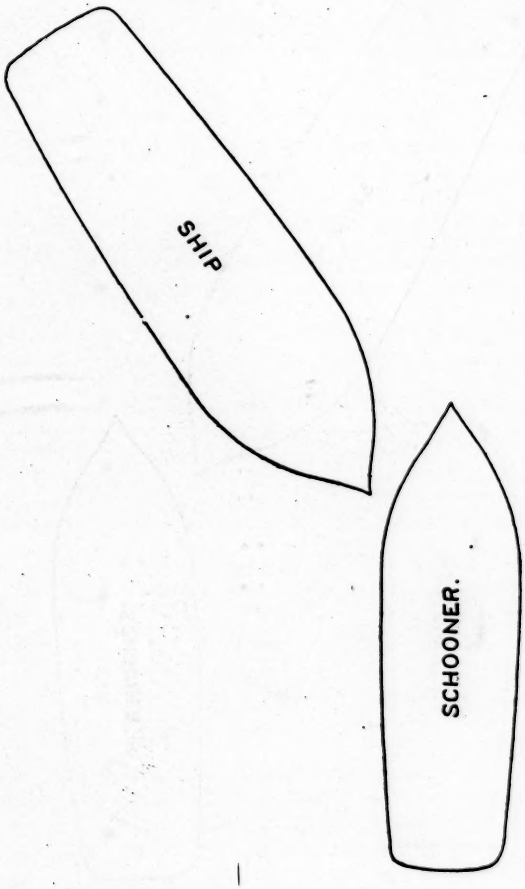
I heard no conversation about this matter in forecastle of tug; never heard Tracy asked as to seeing ship, or any conversation as to seeing ship.

(Chart put in evidence.)

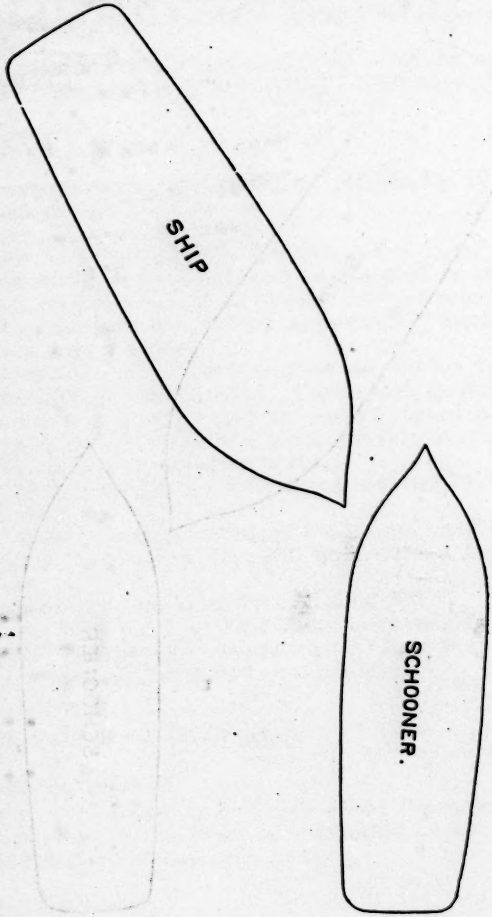
R. D. BENEDICT,
For Libellants.

C. DONAHUE,
For Claimants.

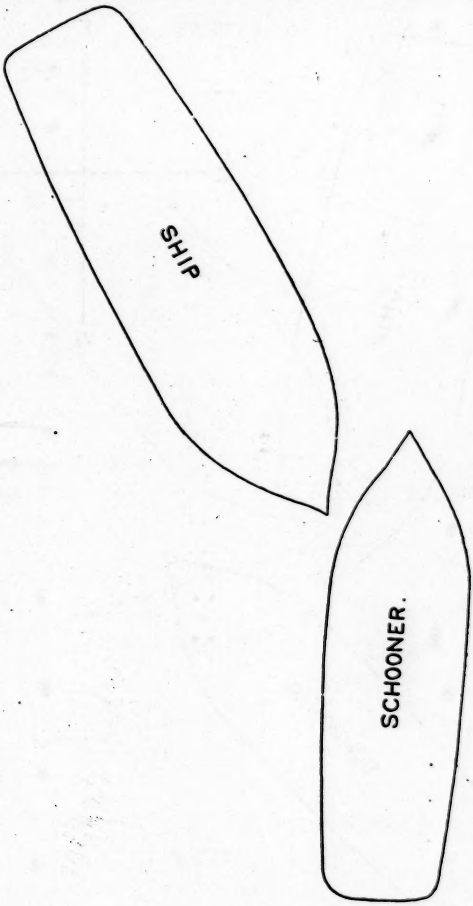
45 DIAGRAM No. 1.—HENRY TRACY, JR.



46 DIAGRAM No. 2.—GEORGE PARKER.

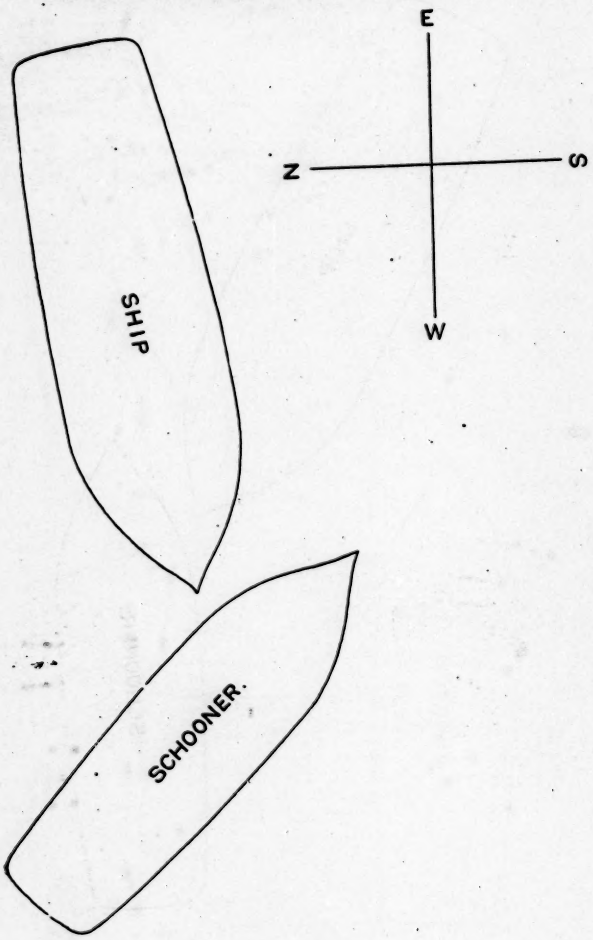


47 DIAGRAM No. 3.—GEORGE W. SARGENT.

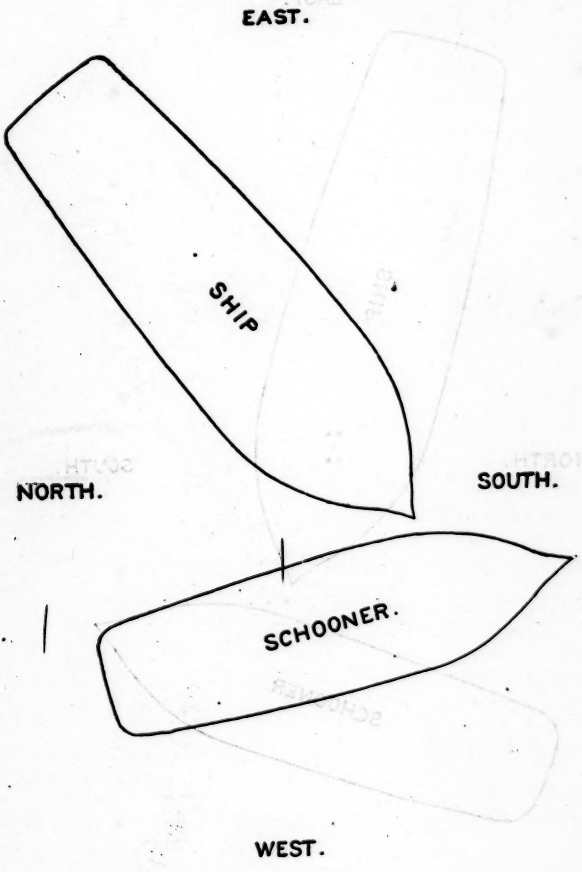


SHIP CIVILTA VS. PERRY ET AL.

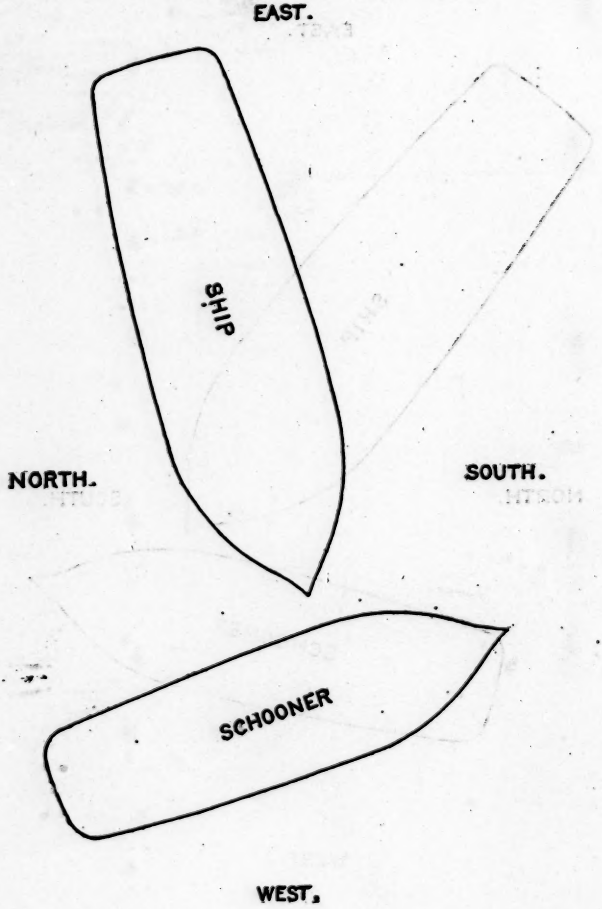
DIAGRAM A.—ALEXANDER S. BANTA.



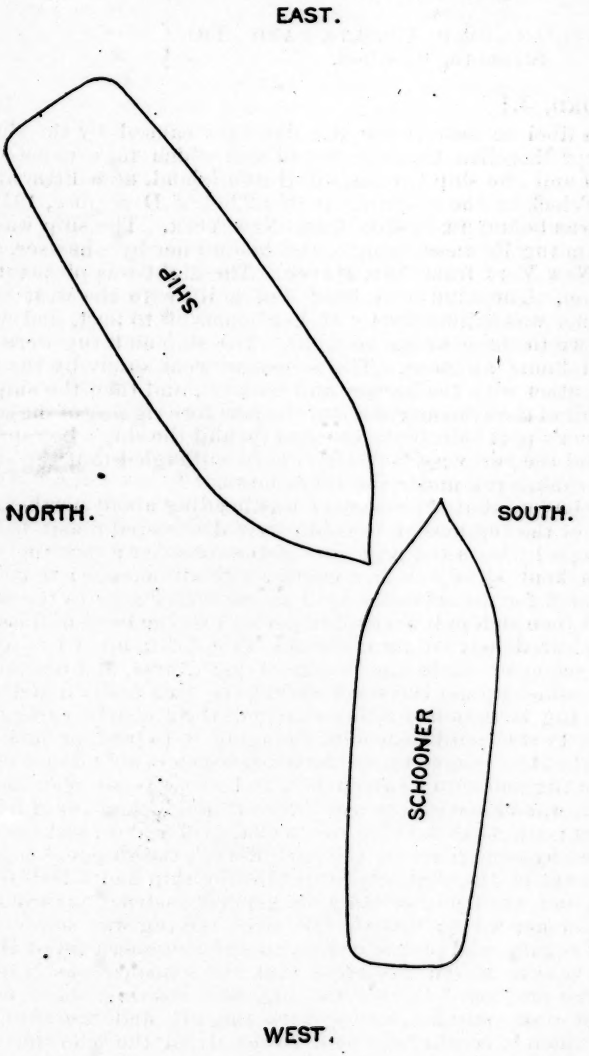
49 DIAGRAM B.—JOSEPH VALCICH.



50 DIAGRAM C.—POLIDOR DICK.



51 DIAGRAM D.—BENEDETTO STAUGER.



52, 53 U. S. district court.

AUGUSTUS B. PERRY AND OTHERS
vs.
THE AUSTRIAN SHIP CIVILTA AND THE Steam-tug Restless.

BLATCHFORD, J.:

This is a libel to recover for the damages caused by the sinking of the schooner Magellen through a collision which took place between that vessel and the ship Civilta, off Hart's Island, at a little after half past two o'clock in the morning on the 22nd of December, 1872. The schooner was bound to Boston from New York. The ship was in tow of the steam-tug Restless, being towed behind her by a hawser, and was bound to New York from New Haven. The night was pleasant and lit by the moon. The wind was light and a little to the west of south. The schooner was sailing free, with her booms off to port, and was making from two to three knots an hour. The ship and tug were making over seven knots an hour. The schooner went safely by the tug and came in contact with the hawser and broke it, and then the ship struck the port side of the schooner at about the port fore rigging of the schooner, the schooner's port side being crushed in, and the ship's bowsprit being broken, and the two vessels becoming so entangled that the schooner, when she sank, sank under the ship's bows.

The libel avers that the schooner was heading about northeast; that the lights of the tug and of the ship were discovered about half a mile off, bearing a little on the port bow of the schooner; that the schooner was kept steady on her course, without change; that the tug
54 headed for the schooner until she was very near to the schooner, and then suddenly sheered to port across the bows of the schooner and just cleared her, but brought the ship down upon the schooner; that the schooner made no change of her course, and did nothing to cause the collision, and the same could have been easily avoided by the ship and tug if they had either changed their course earlier or had changed it to starboard instead of changing it to port, or had stopped in time; that the schooner could have been seen in abundance of time to enable the tug and ship to avoid her, and she was so seen, but if she was not, it was in consequence of the want of a lookout, or of negligence on his part; and that the ship was in charge of a pilot, and the collision was caused by negligence on the part of both the ship and tug.

The answer of the ship sets forth that the ship had a Hell Gate pilot on board, and was being towed with general instructions from the tug to follow in her wake; that the course of the tug was southwest, that being the regular and proper course, in the neighborhood of Hart's Island, for vessels bound westerly; that the schooner was made ahead and off the starboard bow of the tug, and steering about northeast, and about on a parallel course with the tug and the ship, and on a course which if continued would have carried the schooner at a safe distance on the starboard side of the tug and ship; that the schooner passed the tug, the tug having kept steadily on her course; that when the schooner had thus passed, and when by keeping steadily on her course she would with equal safety have passed the ship, she kept away to the right between the tug and the ship, and although she was repeatedly hailed from the tug and the ship as soon as such change was made to starbard, kept on, and ran upon the hawser by which the ship was being towed, and by striking it and by her onward

motion came in contact with the stem of the ship; that the in-
55 stant the change of the course of the schooner was seen the wheel of the tug was starboarded and she kept off to the left, and the wheel of the ship was promptly starboarded to follow in the wake of the tug, and if possible avoid the schooner, but owing to the change of the course of the schooner the collision could not be avoided either by the tug or the ship; that as the schooner approached the ship, and although careful attention was given, no one could be seen on the deck of the schooner until after the collision, when they were seen hurrying up from below, only partially dressed; that there was no lookout on the schooner, and if there was any man at the wheel he was asleep; that the collision was caused by no fault of those navigating on board of the ship, as she was helpless and steadily followed as directed the wake of the tug; that the collision was not by the fault of the tug, and that it was caused by those on board of the schooner and in charge of her navigation in, among other things, not having a lookout and not having a man at the wheel attending properly to his duties, and not seeing the ship in tow of the tug, and changing the course of the schooner when she had a free wind, and not changing back when hailed. The answer of the steam-tug contains like averments.

The course through Long Island Sound from the eastward to a point between Execution Rock Light and Sands' Point Light is west southwest, by the Coast Survey chart. From that point to a point some distance to the westward of where this collision occurred, the course to the westward is by such chart southwest one quarter south. The schooner insists that she was heading, by compass, northeast when she sighted the green and red lights of the tug and the white bow lights of the tug, and two white lights aloft on the tug, and a white light on the foreyard of the ship, and that those lights were sighted bearing from a point
to a point and a half on the port bow of the schooner; or, as the
56 libel says, "bearing a little on the port bow of the schooner." The tug and the ship insist that they were heading, by compass, southwest when they saw the sails and hull of the schooner, but none of her lights, bearing from a point to a point and a half on the starboard bow of the tug and of the ship, or, as the answers say, "ahead and off the starboard bow." The libellants claim that the tug and the ship, from being thus off the port bow of the schooner, drew across her course, she keeping her courses until the tug crossed such course and shut in her red light, so that the tug left the ship in such a position that the schooner in her onward course got in between the tug and the ship. The defence claims that the schooner was on a parallel course with the tug and the ship, and at a sufficient distance off to pass safely to their starboard, and that the schooner, after getting by the tug, ported suddenly, and sheered sharply in between the tug and the ship.

The witnesses on the part of the schooner are Tracy (her mate), who was at her wheel; George Parker (a hand), who was forward, on the lookout; Sargent (her master), and Clark Parker (a hand). As the two vessels approached each other, Tracy and George Parker were the only persons on the deck of the schooner. Sargent and Clark Parker were in the cabin. Tracy had taken the wheel at two o'clock, some thirty to forty minutes before the collision. He had been on the lookout, forward, from one to two o'clock, and, during that hour, George Parker was at the wheel. At two o'clock Tracy and George Parker changed places. Tracy says that when he took the wheel the schooner was a little past the Stepping Stones; that her course, when he took the wheel, was north northeast; and that, as soon as he took the wheel he

changed her course to northeast. The point of change would be about the point where on the chart the marked course going to the westward changes from south southwest to southwest one-quarter south,
57 such marked course being north northeast from off Throg's Neck, eastwardly, to a little to the eastward of the Stepping Stones, and then northeast one-quarter north to a point between Execution Rock, Light and Sands' Point Light, and then east northeast nearly up to Stratford Point buoy.

Tracy says that he saw the lights of the tug, namely, her green and red lights, and the white light of her stem, and her two lights aloft, and the light on the foreyard of the ship, all at the same time, bearing about a point or a point and a half on his lee or port bow; that he saw them before any report was made to him by the lookout of any light; that the lookout's hail was "a steamer on your lee bow;" that the tug and ship were then from a half to three-quarters of a mile off, and steering, as he thought, about southwest by south; that, when 50 or 100 yards off, the tug changed her course and went across his bow to his starboard and hid her red light; that, up to that time, there had been no change in the course of the schooner, and her helm was then about amidship; that, when the tug showed on his starboard bow, he stepped 3 or 4 feet to the gangway and called to all hands to come on deck, letting go of the wheel, and coming back and taking it again; that there was change of it while he was gone; that he was steering northeast at the time, by compass; that when the tug had got her length clear of him on his weather bow, he heard a hail from her, "Keep off;" that at that time the ship was under his lee, tending a little ahead; that the schooner struck the ship's haw'er, and then the two vessels struck each other; that the schooner had upper mainsail, foresail, jib, flying jib, and main gaff topsail; that up to the time the tug changed her course he had seen no colored lights on the ship; that when he first saw the lights he thought it was a tug towing a vessel; that he heard no whistles from the tug before the collision; and that if the tug had kept on without changing she would have hit the schooner.

58 George Parker testifies that he was forward of the foremast looking out; that when he first saw the lights he saw the side lights and bow light and a light aloft on the tug, and a light on the ship from three-quarters of a mile to a mile off, and bearing from one to two points on his lee bow; that he reported to Tracy "a steamer on the lee bow," and Tracy answered that he saw her; that when the tug was from 50 to 100 yards off, and her lights were bearing a point or more on his lee, she hid her red lights; that after the tug went by the bow of the schooner he heard a hail from the tug "Keep off;" that he did not leave his place forward until the tug had got within 20 feet; that he saw no colored lights on the ship before the collision, and that he did not hear any whistles from the tug.

Sargent was in the cabin. He did not hear the report of the lookout or the answer of Tracy or the whistles from the tug. The first thing he heard was Tracy's call for all hands to come on deck, and then he went out. He says that when he got on deck the ship was under his lee bow, and Sand's Point light was nearly ahead on the starboard side between the jibboom and the fore rigging of the schooner; that he and his crew got into a small boat; that he was astern of the schooner, in the boat, and about in a line with the keel of the schooner when she sank, and then noticed that Sand's Point light bore from two and a half to three points on the starboard bow of the schooner, which would make the

schooner head about north northeast when she sank, she not having separated from the ship.

The witnesses for the defence are Franklin, (pilot of the tug, and who was at her wheel in the pilot house;) Parks and Milliken (hands on the tug and who were in the pilot-house), Banta (a Hell Gate pilot who was on the ship on deck), Valcich (master of the ship who was on deck), Dick (a hand on the ship who was on the lookout forward), Rosa (a hand on the ship who was steering her by a tiller), and Stauger (mate
59 of the ship, who had been below) came on deck before the collision on hearing whistles blown by the tug.

Franklin says that he first made the schooner probably 700 yards off and bearing about a point and a point and a half on her starboard bow; that he saw her sails and the shape of her, but saw no lights on her; that he judged her to be heading about northeast; that she passed his bow to his right, and about from 60 to 100 feet off; that he was steering southwest; that as the schooner passed him she changed her course, by putting down her helm, and went in between the tug and the ship, and struck the hawser; that when he saw that change he blew five whistles and hailed to the schooner to keep off, that he had a ship in tow, and put his wheel to starboard; that the tug changed her heading one point to the southward before the collision; that the schooner was heading about southeast when the ship struck her; that from Sand's Point the tug and ship were in charge of the Hell Gate pilot, who was on the ship, and that he received no orders from that pilot.

Parks and Milliken each give substantially the same testimony as Franklin in regard to the above matters.

Banta says that the ship had her colored lights up and a white light forward; that he was aft near the tiller; that when he first saw the schooner the ship was heading southwest by compass; that he saw the sails of the schooner, bearing about a point and a half on his starboard b*ar*, and about 600 yards off; that he saw no lights on the schooner; that he next heard 5 whistles from the tug, and saw the schooner luffing sharp, and heard a hail from the tug to keep off, and helped to pull the tiller of the ship to starboard and then ran forward, by which time the vessels had struck; that up to the time of the whistles he noticed no change in tug; that when the vessels struck the schooner was heading about southeast; that the ship changed only one point by starboarding; that he was pilot of the ship from Sand's Point, and
60 it was his place to hail the tug if her course was not suitable; and that he gave no direction to the tug and was not close enough to her to give any.

Valcich says that the first he saw of the schooner was her sails, bearing nearly a point off his starboard bow, and a little on the starboard side of the tug, and from 600 to 700 yards off from the tug; that he saw no lights on her; that he was standing on the forecastle of the ship and saw the schooner when she had got nearly past the tug alter her course more to the southward by a quick sheer; that when the schooner changed the tug blew 5 whistles and hailed to the schooner, and he and his outlook hailed to her; that the schooner changed from northeast to southeast; that when the schooner changed the tug kept off one point and the ship starboarded one point; and that he starboarded as the schooner was going across his bow. The above is his version, on his direct examination. On his cross-examination he says that he was standing aft when he heard the tug's whistles; that he then saw the ship starboard; that he then went forward, and that before the ship starboarded he saw that the tug had changed her course.

On his direct examination again, he reiterates that he was on the forecastle when he saw the schooner change, and adds that the schooner changed her course after he heard the whistles of the tug; that when he heard those whistles the schooner was heading about northeast; that the tug went off to the southward before the schooner did; that he was running forward when the tug changed, and that he was on the forecastle on the starboard side when the schooner changed.

Dick says that he was on the lookout on the forecastle of the ship; that he first saw schooner ahead of the tug, on his starboard bow, and about 20 or 30 fathoms from the tug; that he saw the schooner pass the tug; that after the tug blew her whistles the schooner, when a little astern of the tug, changed her course; that after the schooner
61 changed the tug changed to go more to the south; and that he saw no lights on the schooner.

Rosa says that he had the tiller of the ship and was steering southwest when he heard whistles from the tug; that after that he saw the schooner crossing his bow; that then he put his helm to starboard by the order of and with the aid of the pilot; that the ship had changed about a point toward the south when the crash came; that he did not see the schooner before he heard the whistles, and that he saw the tug change when the schooner got across the bow of the ship.

Stauger says that while below he heard the whistles of the tug; that he came up and looked at the compass; that the ship was then heading southwest; that he then ran forward and saw the schooner astern of the tug, crossing; that he saw the schooner strike the hawser, and was on the forecastle when the vessels struck; that he saw no lights on the schooner, and that when he got on the forecastle the tug was keeping to the south.

On the facts proved in this case the ship must be regarded as a ship under steam at the place of collision. From Sand's Point westward, the ship and the tug were under the charge and direction, as to navigation, of the pilot on board of the ship, who was in the service of the ship. It is true that the steam power of the ship was on board of the tug, more than 250 feet away, but the fact that it was at that distance off was owing to the voluntary action of the pilot, who might have had the tug alongside of the ship, and did put her alongside after the collision. The steam power of the ship, by which alone she was moving, was where the ship chose to have it. If the tug had been alongside of the ship the two would, in law, have been regarded quoad the schooner as one vessel, and that a steam vessel, the motive power being in the tug and the governing power in the ship. It can make no difference so far as the rights of the schooner as against the ship was concerned, that the tug, at the option of the ship, was 250 feet away. (The
62 Cleadon, 1 Lushington, 258.) If the schooner did nothing to produce the collision, it was the duty of the ship, as a ship under steam, to keep out of the way of the schooner, and the duty of the schooner to keep her course. The question is whether the ship failed to discharge that duty, through any fault of the schooner, in not keeping her course, or otherwise. The burden is on the ship to exculpate herself. In my judgment she has not done so.

The ship sets up, in her answer, that the schooner did not have a lookout. This is sought to be maintained by evidence, that he was not seen from the other vessels. But it is shown that he was at his post and reported the tug, and left his post only when it was becoming dangerous for him to remain there.

The ship also sets up, in her answer, that the schooner did not have

a man at the wheel, properly attending to his duties, and that, if there was any man at the wheel, he was asleep. This is shown by the evidence to be a reckless assertion, and void of foundation.

The ship also sets up that the schooner did not see the ship in tow of the tug. This is disproved by the evidence.

The ship also sets up that the schooner changed her course at a time and place when otherwise she would have gone safely by the ship, and did not change back when hailed. It is for the ship to establish this change of course, and to establish it, if made, as one not made in the moment of peril.

The positive evidence from the schooner is to the contrary of any such change. If it is to be taken as absolutely true that the schooner and the ship were steering opposite and parallel courses it cannot be true that the tug and ship were seen off the port bow of the schooner, and that at the same time the schooner was seen off the starboard bows of the tug and ship.

63 The testimony from each vessel as to where away she saw the other vessel is more reliable evidence when such testimony from both vessels is applied to the case, as to the manner in which the two vessels were approaching each other, than any testimony as to compass courses, particularly where, as here, the vessels were in a comparatively narrow strait, and had lights ahead, the schooner being headed to go between Execution Rock Light and Sand's Point Light, and being about two miles away from them, and the tug and the ship being headed about for Throgs' Neck Light, and being about three miles away from it. It is true that the proper chart courses of the two vessels in the reach where they met would be that of the schooner, northeast one quarter north, and that of the ship, southwest one quarter south, and thus directly opposite. But, allowing for a little divergence from such courses, and for a tendency on the part of the witnesses from both vessels to exaggerate, the schooner the extent of which the ship was on the port bow of the schooner, and the ship the extent to which the schooner was on the starboard bow of the ship, and the vessels are brought each nearly ahead to the other, and nearly end on, and yet drawing across the courses of each other, the tug and ship drawing across the course of the schooner, from the port side of the schooner to the starboard side of the schooner, and the schooner drawing across the course of the tug and ship from their starboard side to their port side, and thus the schooner seeing the tug and ship a little on her port bow, and the tug and ship seeing the schooner a little on their starboard bow; then again, the schooner saw both of the colored lights of the tug up to the time when the tug was but a few feet off from the schooner, and then the green light of the tug remained in view, and her red light went out of view, showing that she must have been nearly ahead to the schooner, but drawing from port to starboard of the schooner. And in this regard, it is very

64 important to note that the tug and ship saw no lights on the schooner, although the evidence is that they were set and properly burning. All that the persons on the tug and ship saw was the sails and hull of the schooner. If they had seen her colored lights, and observed and described their bearing and movements, we should have been able to see how the schooner was approaching the tug and ship, as we are able to see how the tug and ship were approaching the schooner from the view had on the schooner of the colored lights of the tug. I conclude from these considerations, and from the whole evidence that the schooner did not change her course; that the tug and ship mistook the course of the schooner; that the schooner's course was really

drawing on to the course of the tug and ship in such wise that the two courses were pactically end on where they crossed; that the unchanged courses of the schooner and the ship crossed each other just in advance of the ship, and either between the tug and the ship or at a point ahead of the tug, so that the tug by starboarding, avoided striking the schooner, and that the tug and ship, not seeing any colored lights on the schooner, and they not being able to know which way the schooner was coming, ought not to have kept on with undiminished speed. The tug did not slow until the schooner got up to her and did not stop until the schooner was just striking the hawser.

The change attributed to the schooner is a deliberate one, made by porting, to luff into the wind. It is not a change which could have taken place by the leaving of her wheel, because that would have caused her to go to port, by falling off with the wind. The schooner cannot be held in fault for not starboarding, either before being hailed from the tug or after that. She had a right to suppose the tug and ship would avoid her; and the discovery by her that the tug was crossing her bows, and that the ship was getting in her way was made, and the hail from the tug came, at a time when a collision with the ship was inevitable, so far as there appears to have been any power in the schooner to avoid it by starboarding.

65 The suggestion that the schooner's lights were not burning, because they were not seen from the tug or ship, cannot control the distinct evidence from the schooner, that they were burning. Moreover, it is not set up in either of the answers, that any want of lights on the schooner misled the tug or the ship, or contributed to the collision. Nor is any allegation to that effect made in either of the answers, respecting the non-exhibition of a flash of light by the schooner. The ship had her colored lights burning, and yet neither of them was seen from on board of the schooner before the collision, while all the other lights of the tug and the white light of the ship were seen; and the whistles of the tug were not heard on the schooner. It is therefore not a strange circumstance that the schooner's colored lights were not seen.

Is the tug, also, liable for this collision? She was subject to the orders of the pilot in charge of the ship, as is clearly shown. But the tug received no orders from him. While it would have been the general duty of the tug to have followed all orders from the ship, and while the tug would not have been liable if the collision had resulted from her following improper orders given from the ship, yet, under the actual facts of this case, I think the tug is liable equally with the ship. In the absence of any special instructions from the pilot in charge of the ship as to what was to be done in view of the approach of the schooner, it was the duty of the master of the tug, knowing, as he did, that from Sand's Point the pilot on the ship was in charge and knowing also that the ship was too far behind for orders to be given, and that it was the privilege and duty of the tug to be placed alongside of the ship where orders could be readily received, to take care so to navigate the the tug and the ship as to avoid a collision between either and the schooner. (The Secret, 8 Mitchell's Maritime Register, 116.) If the collision had happened to the eastward of Sand's Point, the tug would clearly have

66 been liable, and the ship not liable. The fact that the ship is held liable for this collision, for the reasons before given, cannot exonerate the tug from responsibility for not practically giving the charge up to the ship, by taking the ship alongside from Sand's Point, and for leaving the state of things, as regarded the relations of the tug

to the schooner to continue the same as they were before the tug and ship reached Sand's Point.

There must be a decree for the libellants against both vessels, with costs, with reference to a commissioner to ascertain the damages sustained by the libellants.

R. D. BENEDICT,
For Libellants.
BEEBE, DONOHUE & COOKE,
For the Tug and the Ship.

67 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on Friday, the 24th day of January, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Samuel Blatchford, district judge.

AUGUSTUS B. PERRY AND OTHERS
vs.
THE AUSTRIAN SHIP CIVILTA AND THE STEAMtug Restless, their tackle, &c. } 24424.

This case having been heard on the pleading and proofs argued and submitted by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellants recover in this action against the ship Civilta and steamtug Restless, their tackle, &c., the damages by them, said libellants, sustained by reason of the collision in their libel set forth, with their costs to be taxed. And that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and report thereon to this court with all convenient speed.

SAM'L BLATCHFORD.

68 District court of the United States for the southern district of New York.

AUGUSTUS B. PERRY AND OTHERS
vs.
THE AUSTRIAN SHIP CIVILTA AND THE STEAMtug Restless, their tackle, &c.

In pursuance of a decretal order made in the above-entitled cause on the 24th day of January, in the year of our Lord one thousand eight hundred and seventy-three, by which among other things it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants for damages by them sustained by reason of the collision in their libel set forth, and to report thereon to this court with all convenient speed.

I, Edward L. Owen, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the libellants and claimants and by the witnesses produced by the libellants, and have taken and examined the testimony offered in support of the libellants' claim for damages, and do find that there is due to the libellants as follows:

For value of vessel totally lost	$6,000 00	
Interest thereon from Dec. 22, 1872, to March 4th, 1873	69 60	
		$6,069 60
Value of cargo of coal, 175 tons, at $4.25 per ton.	831 25	
Interest as above	9 64	
		840 89
69. Freight in said cargo of coal less the expenses of completing the voyage	547 20	
Interest as above	6 35	
		553 55
Value of captain's effects	200 00	
Interest as above	2 32	
		202 32
Total amount due libellants		$7,666 36

Making the whole amount I find due the libellants the sum of seven thousand and six hundred and sixty-six and 36-100 dollars.

Dated New York, March 4th, 1873.

All which is respectfully submitted,

EDWARD L. OWEN,
U. S. Commissioner.

Filed March 4th, 1873.
(Confn. nisi, 4 days.)

70 U. S. district court.

A. B. PERRY ET AL.
vs.
SHIP CIVILTA & STEAMTUG RESTLESS, &C. } Vol. 24, page 424.

The libellants except to the commissioner's report as follows:

First. Because the commissioner fixed the value of libellant's schooner at six thousand dollars, instead of six thousand five hundred dollars.

Second. Because the commissioner allowed nothing for money on board lost with the vessel.

BENEDICT, TAFT & BENEDICT,
Proctors for Libellants.

Filed March 7th, 1873.

71 U. S. district court.

A. B. PERRY ET AL.
vs.
SHIP CIVILITA & STEAM-TUG RESTLESS, &C.

GENT'MEN: Please take notice that the motion noticed herein for the 29th day of March last, for leave to amend the libel herein, will be brought on before this honorable court at the opening thereof on the 29th day of April, 1873.

N. Y., April 23, 1873.

Yours, &c.,

BENEDICT, TAFT & BENEDICT,
Libellants' Proctors.

To BEEBE, DONOHUE & COOKE,
Claimants' Proctors.

72 U. S. district court, southern district of New York.

A. B. PERRY ET AL.
vs.
THE AUSTRIAN SHIP CIVILTA & THE STEAM-tug Restless, &c.

DISTRICT OF MASSACHUSETTS, *ss:*

Oliver H. Perry, being duly sworn, says that he is the libellant in this cause, by whom the libel herein was sworn to; that deponent went to New York from Boston, in haste, to attend to the commencement of this action, and did not make any accurate examination as to the cost of the schooner Magellan to her owners, before he went, and when he swore to the libel he did not know and was not able to state accurately what her value was, and therefore stated to his counsel that her value was about $6,000, but did not intend thereby to swear that her value was no more than that sum; that deponent has since examined into the actual cost of said vessel to her owners, and the same was accurately stated by him in his evidence before the comissioner herein.

OLIVER H. PERRY.

MASSACHUSETTS DISTRICT, *ss:*

BOSTON, *March 24th*, 1873.

73 Personally appeared Oliver H. Perry, and made oath to the statement and affidavit by him signed. Before me.

[U. S. C. SEAL.] HENRY L. HALLETT,
U. S. Commissioner, Massachusetts District.

U. S. district court, southern district of New York.

AUGUSTUS B. PERRY ET AL.
vs.
THE SHIP CIVILTA AND STEAM-TUG RESTLESS.

Messrs. BEEBE, DONOHUE & COOK,
Proctors for Claimants:

GENTLEMEN: Take notice that on the proceedings in this cause, the testimony taken before the commissioner, and the affidavit of Oliver H. Perry, a copy whereof is herewith served on you, we shall move this honorable court, at the United States court-rooms, in the city of New York, on Saturday, the 29th day of March, instant, at eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order amending the libel filed in this cause, by substituting the
74 sum of $6,500 instead of $6,000, as the costs of the schooner Magellan to her owners, and for such other or further order or relief in the premises as may be just.

Yours, &c.,

BENEDICT & BENEDICT,
Proctors for Lib'ts, 64 Wall St., N. Y.

U. S. district court.

THE SHIP CIVILTA, HER TACKLE, &C., AND The Steam-Tug Restless, her tackle, &c., *ag'st* AUGUSTUS B. PERRY ET AL.

STATE OF NEW YORK,
City and County of New York, ss:

Welcome R. Beebe, of said district, being duly sworn, says that he is one of the proctors for the claimants in the above entitled action, and had charge of the reference in this cause; that the libellants having in their libel only claimed the value of the vessel to be six thousand dollars, deponent did not think it necessary to call witnesses on the subject of value, but he is satisfied that he could reduce the value to that had be not relied upon that allegation of the libellants themselves as to the value of their vessel; that if a larger amount is to be given than six thousand dollars, deponent desires the reference to be opened,
75 and he to have leave to introduce his testimony upon that amount.

W. R. BEEBE.

Sworn to before me this 16th day of May, 1873.

JOHN V. KEEFE,
Notary Public, N. Y. County.

Order to amend libel as to value of vessel of libellants, &c.

U. S. district court.

AUGUSTUS B. PERRY ET AL. *vs.* THE SHIP CIVILTA, AND THE STEAM TUG RESTLESS. } 24424.

On reading and filing affidavits and notice of motion for leave to amend the libel herein, it is ordered that the libel herein be and the same is hereby amended by inserting the sum of $6,500 as the value of the vessel, instead of $6,000.

And it is further ordered, that if the respondents give notice on or before the 20th May, instant, that they desire to offer further evidence as to the value of said vessel, the report herein be referred back to the commissioner to take such proof or reference to the value of said vessel as may be offered by the respondents within two weeks from that day and such evidence as the libellants may thereafter offer on that question, and report anew as to the value of said vessel to the court.

May 16th, 1873.

SAM. BLATCHFORD.

Filed May 16th, 1873.

76 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Samuel Blatchford, district judge.

AUGUSTUS B. PERRY AND OTHERS
agt.
THE AUSTRIAN SHIP CIVILTA AND STE'M TUG Restless, their tackle, etc.

Exceptions having been filed to the report of the commissioner in the above entitled action, and argument having been had thereon by the advocates for the respective parties, it is now ordered, that the exceptions to the said report be, and the same are hereby, sustained.

And on motion of Benedict, Taft & Benedict, libellants' proctors, it is ordered, adjudged, and decreed that the libellants recover in this action against the ship Civilta and steamtug Restless, or their said claimant, for the damages sustained by them, by reason of the collision mentioned in the pleadings, the sum of eight thousand two hundred and ninety-eight 67-100 dollars, besides their costs, which costs have been taxed at three hundred and sixty-three 24-100 dollars, said damages and costs amounting in all to the sum of eight thousand six hundred and sixty-one 91-100 dollars, and that said ship Civilta and steamtug Restless, their tackle, etc., be condemned therefor, and it is hereby adjudged and decreed that the respective claimants of each of said vessels shall be and are responsible to the libellants for the said sum of eight thousand six hundred and sixty-one 91-100 dollars, and interest thereon.

77 And it is further ordered, adjudged, and decreed, that the said damages be apportioned between said ship Civilta and said steamtug Restless, and that the libellants recover of the ship Civilta, her tackle, etc., or her said claimants, the sum of four thousand three hundred and thirty 95-100 dollars, and interest thereon, and that the libellants recover of said steamtug Restless, her engine, tackle, etc., or her said claimants, the sum of four thousand three hundred and thirty 95-100 dollars, and interest thereon.

And it is further ordered, adjudged, and decreed, that on the payment by the claimants of either vessel of the said one-half of said damages and costs, and interest thereon to date of payment, the proceedings of the libellants be stayed, as to such vessel and her claimants, for the collection of the residue, until the return by the marshal of an execution unsatisfied against the claimants of the other vessel for the other half part of said amount, or until it shall otherwise appear that the said libellants are unable to enforce or collect the other part of said damages, costs, and interest, against the claimants of the other vessel, by process from thi' court.

And on like motion it is further ordered, that out of the proceeds of the stipulations for value of the said ship Civilta and steamtug Restless, and when paid into the registry of the court, the clerk of this court pay to the libellants in this action, or their proctors, the said amount, together with interest.

And on like motion of Benedict, Taft & Benedict, proctors for the libellants, it is further ordered, that unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the stipulators forthwith pay into court the amount

78 of their respective stipulations, and the clerk, after deducting the taxed costs of officers of court herein, distribute the proceeds in satisfaction of this decree.

SAMUEL BLATCHFORD.

(Endorsed:) 24 424–429. U. S. district court. Augustus B. Perry et

al. ag't Ship Civilta and Steamtug Restless, their tackle, etc. Final decree. Benedict, Taft & Benedict, libellants' proctors, 64 Wall street. Filed May 29th, 1873.

79 U. S. district court.

THE SHIP CIVILTA AND STEAM-TUG RESTLESS, ETC., *ag'st* AUGUSTUS B. PERRY ET AL.

Gentlemen: Please to take notice that the claimants herein hereby appeal to the next circuit court of the United States for the southern district of New York from the decree in the above action and every part thereof.

Filed May 29th, 1873.

Yours, &c.,

BEEBE & DONOHUE,
Proctors for Claimants of Ship and Tug.

Dated June 7th, 1873.

To GEORGE F. BETTS, Esq., *Clerk.*
RENEDICT, TAFT & BENEDICT,
Libellants' Proctors.

(Endorsed:) Notice of appeal. Filed June 7th, 1873.

80 Circuit court of the United States for the southern district of New York, in the second circuit.

THE SHIP CIVILTA, HER TACKLE, &C., IMpleaded with the steam-tug Restless, her tackle, Casimir Cosulilch, claimant and appellant,

vs.

AUGUSTUS B. PERRY, O. H. PERRY, JOHN Moseley, William G. Moseley, Ira Allen, Love Jay, George R. Emerson, Calvin G. Peck, and O. W. Gilman, libellants and appellees.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The petition of appeal of the above-named appellant respectfully showeth:

That the above-named libellants, Augustus B. Perry, O. H. Perry, John Moseley, William G. Moseley, Ira Allen, Love Fay, George R. Emerson, Calvin G. Peck, and O. W. Gilman, exhibited their libel of complaint in the district court of the United States for the south-
81 ern district of New York on the 26th day of December, 1872, against the ship Civilta, her tackle, apparel, and furniture, and also the steam-tug Restless, in a cause of collision, civil and maritime, in and by which libel of complaint the libellants claimed a sum exceeding fifty dollars for damages caused by the collision aforesaid, and praying that the said vessels might be adjudged and condemned to pay the same with costs, and process was thereupon duly issued out of said court in said action and delivered to the marshal of the United States for the said district, and was by him duly executed. That thereupon your petitioner duly appeared in said action as claimant of said ship Civilta, and filed his separate answer to said libel. That John G. Baker also appeared in said action and claimed the said steam-tug Restless, and

filed his separate answer to said libel. That issue being thereupon joined, and such proceedings were thereupon afterwards had that, by the judgment and decree of the said district court, entered in said action on the twenty-ninth day of May, one thousand eight hundred and seventy-three, the libellants recovered in said action the sum of eight thousand six hundred and sixty-one (91-100) dollars, damages and costs, and of which sum the said ship Civilta was adjudged to pay the sum of four thousand three hundred and thirty (95 100) dollars, and the said steam-tug Restless a similar sum, the damages by the said court being apportioned between said vessels.

Your petitioner alleges that in the giving of said judgment and decree there was manifest error in this, to-wit, that the said judgment and decree should have been in favor of the said ship Civilta, and that as to her said libel should have been dismissed with costs.

Your petitioner, for these and other reasons, appeals from so much of the said decree as adjudges that any portion of the said damages should be born' by the said ship Civilta, and also so much of said decree as fixes the amount of said damages, to next circuit court to
82 be holden in and for the said district, and that on said appeal he intends to have the said cause heard anew on the pleadings and proofs in the said district courts, and other pleadings and proofs to be introduced in the said circuit court, and to seek a new decision on the facts.

And your petitioner prays that the record and proceedings may be returned to the said circuit court, and that so much of said decree as adjudges that the said ship Civilta bear any portion of the damages aforesaid, and so much of said decree as fixes the amount of said damages may be reversed, or that such other decree may be made as to said circuit court shall seem just, and that the appellees may be condemned to pay to the appellant his costs in the premises.

CASULICH.

W. R. BEEBE,
Proctor for Appellant.

(Endorsed:) 24, 424, 429. U. S. circuit court. The ship Civilta, her tackle, &c., impleaded with the steam-tug Restless, her tackle, &c. Casimir Casulich, claimant and appellant, vs. Augustus B. Perry and others, libellants and appelles. Petition of appeal. W. R. Beebe for appellant. Filed April 23d, 1874.

83 Circuit court of the United States for the southern district of New York, in the second circuit.

THE STEAM-TUG RESTLESS, HER TACKLE, &C., impleaded with the ship Civilta, her tackle, &c., John G. Baker, claimant,
vs.
AUGUSTUS B. PERRY, O. H. PERRY, JOHN Moseley, William G. Moseley, Ira Allen, Love Jay, George R. Emerson, Calvin G. Peck, and O. W. Gilman, libellants and appellees.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The petition of appeal of the above-named John G. Baker respectfully showeth:

That the above-named libellants, Augustus B. Perry, O. H. Perry,

John Moseley, William G. Moseley, Ira Allen, Love Jay, George R. Emerson, Calvin G. Peck, and O. W. Gilman, claiming to be owners of the schooner Magellan, exhibited their libel of complaint in the district court of the United States for the southern district of New York on the twenty-sixth day of December, one thousand eight hundred
84 and seventy-two, against the ship Civilta, her tackle, apparel, and furniture, and also against the said steam tug Restless, her engine, and in a cause of collision, civil and maritime, in and by which libel of complaint the libellants claimed a sum exceeding fifty dollars for damages caused by the collision aforesaid, and praying that the said vessel might be adjudged and condemned to pay the same with costs, and process was thereupon duly issued out of said court in said action and delivered to the marshal for the United States for the said district, and was by him duly executed.

That thereupon your petitioner duly appeared in said action as claimant of the said steam-tug, and filed his separate answer to the said libel.

That Casimir Casulich thereupon also appeared in said action, and claimed the said ship Civilta, and filed his separate answer to said libel. That issue being thereupon joined, and such proceedings were thereupon afterward had that by the judgment and decree of the said district court, entered in said action, on the twenty-ninth day of May, one thousand eight hundred and seventy-three, the libellants recovered in the said action the sum of eight thousand six hundred and sixty-one $\frac{20}{100}$ dollars damages and costs, and of which sum the said steam-tug Restless was adjudged to pay the sum of four thousand three hundred and thirty $\frac{95}{100}$ dollars, and the said ship Civilta a similar sum, the damages by the said court being apportioned between said vessels.

Your petitioner alleges that in the giving of the said judgment and decree there was manifest error in this, to wit, that the said judgment and decree should have been in favor of the said steam-tug Restless, and that as to said steam-tug the said libel should have been dismissed with costs.

Your petitioner, for these and other reasons, appeals from so much of the decree as adjudges that any portion of the said damages should be borne by the said steam-tug Restless, and also so much of said
85 decree as fixes the amount of said damages, to the next circuit court, to beholden in and for said district, and that on said appeal he intends to have the said cause heard anew on the pleadings and proofs in the said circuit court, and to seek a new decision on the facts.

And your petitioner prays that the record and proceedings may be returned to the said circuit court, and that so much of said decree as adjudges that the said steam-tug Restless bear any portion of the said damages, and so much of said decree as fixes the amount of said damages, may be reversed, and that such other decree may be made as to said circuit court shall seem just, and that the appellees may be condemned to pay the appellant his costs on the premises.

W. R. BEEBE,
Proctor for Appellant Baker.

(Endorsed:) 24, 424, 429. Circuit court of the United States for the southern district of New York. The steam-tug Restless (impleaded with the ship Civilta), her tackle, &c. J. G. Baker and appellant against Augustus B. Perry et al., libellants and appellees. Petition of appeal. W. R. Beebe, proctor for appellant. Filed April 23d, 1874.

86 AUGUSTUS B. PERRY AND OTHERS, LIBELLANTS and appellees,
vs.
AUSTRIAN Restless, SHIP CIVILTA AND THE STEAM-TUG their tackle, &c., Casimir Cusolich, claimant of ship, John G. Baker, claimant of tug, appellants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this twenty-third day of April, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-eighth.

GEO. F. BETTS, *Clerk.*

BENEDICT, TAFT & BENEDICT,
Proctors for Lib'lts & App'lts.

ROBERT D. BENEDICT,
Advocate.

W. R. BEEBE,
Proc. & Adv. for Claimants of Ship & Tug, Appellants.

87 We consent that the within printed case be used on the appeal herein, and we certify that the within printed matter is correct.
Oct. 23, 1874.

BEEBE, WILCOX & HOBBS,
Proctors for App'l's.

BENEDICT, TAFT & BENEDICT,
Pr. for Lib'l'ts.

88 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the sixteenth day of December, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Alexander S. Johnson, circuit judge.

AUGUSTUS B. PERRY ET AL., LIBELLANT, & appellees,
vs.
THE BARK CIVILTA & STEAM-TUG RESTLESS, claimants & appellants.

The appeal in this case from the decree of the district court coming on to be heard:

Mr. Robert D. Benedict reads from the apostles testimony on the part of libellants & appellees.

Mr. William Allen Butler reads from the apostles testimony on the part of the bark Civilta.

Mr. F. H. Wilcox reads from the apostles testimony on the part of the tug.

Adjourned to the 17th inst., at 11 a. m.

89 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the seventeenth day of December, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Alexander S. Johnson, circuit judge.

AUGUSTUS B. PERRY ET AL., LIBELLANTS and appellees,
vs.
THE BARK CIVILTA AND STEAM-TUG RESTLESS, claimants and appellants.

The appeal in this cause being still on hearing:

Mr. R. D. Benedict is heard on the part of the libellants and appellees.

Mr. William A. Butler is heard on the part of the respondents and appellants, of the bark Civilta.

90 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the eighteenth day of December, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Alexander S. Johnson, circuit judge.

AUGUSTUS B. PERRY ET AL., LIBELLANTS & appellees,
vs.
THE BARK CIVILTA AND STEAM-TUG RESTLESS.

The appeal in this cause being still on hearing:

Mr. Welcome R. Beebe is heard on the part of the tug.

Mr. R. D. Benedict is heard in reply.

C. A. V.

91 U. S. circuit court, southern district of New York.

AUGUSTUS B. PERRY & OTHERS, LIBELLANTS & appellees,
vs.
THE AUSTRIAN SHIP CIVILTA & THE STEAM-tug Restless, Casmir Casulich & others, claimants & app'l'ts.

R. D. Benedict, for libellants; Wm. Allen Butler, for ship; W. R. Bebee, for tug.

JOHNSON, J.:

After a minute examination of the evidence in this case, I concur in the views both of the fact & the law expounded by the district judge, and I can see no benefit to the parties in respecting those reissues in different language. A change of course is not attributed to the schooner until she was clear of the tug at a distance variously stated by the claimants' witnesses at from 50 to 100 feet, & the courses of tug &

92 schooner were thus said to be parallel. Now, from the stern of the tug to the point where the hawser was broken at the collision was 30 fathoms. This distance the ship could traverse less than a quarter of a minute, moving, as she is shown to have been, about 800 feet a minute & with the tide. At the end of a quarter of a minute, therefore, the part of the hawser which first came in contact with the schooner would have been brought to the point where the stern of the tug was at its beginning. If at the same instant the schooner could have been set at right angles to her course without any stop of motion, & headed directly towards the line of the hawser, her full speed might possibly have brought her to the hawser if the distance was only fifty feet. Her speed was about 200 feet in a minute, allowing for the effect of the tide, which was against her. But in fact the schooner was, according to the theory of the claimants and the testimony of their witnesses, on a course parallel to that of the tug & ship. She could not have her course altered so rapidly. The tug & ship altered their
93 courses at or near the same instant, & the captain of the ship testifies that the tug went off to the south just before the schooner did. The tug & ship put their helms hard a-starboard & yet their courses were altered only one point before the collision, & yet it is maintained that in the same time the schooner's course was altered eight points, or nearly that.

This satisfies my mind that the collision did not arise in the way that the claimants contend, & that their case of an alteration of the schooner's course bringing about the collision fails to be made out.

They are therefore not relieved from the duty which the rule of navigation casts upon them, considered together as a vessel under steam, of keeping out of the way of a sailing vessel when there is danger of collision.

In my opinion the decree of the district court must be affirmed.

94 (Endorsed:) U. S. circuit court, so. dist. of N. Y. Perry et al. vs. Ship Civilta, Tug Restless, &c. Opinion for affir. Johnson, J. U. S. circuit court. Filed Jul. 24, 1877. John I. Davenport, clerk.

95 At the stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the court-rooms in the city of New York on the 26 day of October, 1877.

Present, the honorable Alexander S. Johnson, circuit judge.

AUGUSTUS B. PERRY, O. H. PERRY, JOHN Mosely, William G. Mosely, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck & O. H. Gilman, lib'l'ts & appellees,
ag'st
THE AUSTRIAN SHIP CIVILTA, HER TACKLE, &c., Casimir Casulich, claimant, the steam-tug Restless, her engine, &c., John G. Baker, claimant, appellants.

This cause coming on to be heard on the appeal, and having been argued and submitted by the advocates for the respective parties, and due deliberation having been had, it is now ordered, adjudged,
96 and decreed that the decree of the district court herein be, and the same is hereby, in all things affirmed with costs, and the said costs having been taxed at the sum of eighty-one $\frac{25}{100}$ dollars.

It further ordered that Augustus B. Perry, O. H. Perry, John Mosely, William G. Mosely, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. W. Gilman, libellants and appellees herein, do recover against the Austrian ship Civilta, her tackle, &c., and Casimir Casulich, claimant thereof, and the steam-tug Restless, her engine, &c., and John G. Baker, claimant thereof, the sum of eight thousand six hundred and sixty-one $\frac{91}{100}$ dollars, the amount of the decree in the district court, with interest thereon from the 29th day of May, 1873, to the date hereof, amounting to the sum of twenty-six hundred and fifty-seven $\frac{74}{100}$ dollars, together with the sum of eighty-one $\frac{25}{100}$ dollars, the costs of this court as taxed, amounting in all to the sum of eleven thousand four hundred $\frac{90}{100}$ dollars, and that said Austrian ship Civilta, her tackle, &c., and said
97 steam-tug Restless, her engine, &c., be condemned therefor.

And it is further ordered, adjudged and decreed that the said damages be apportioned between said ship Civilta and said steam-tug Restless, and that the libellants recover of the ship Civilta, her tackle, &c., and her said claimants, the sum of five thousand seven hundred $\frac{45}{100}$ dollars, and interest thereon, and that the libellants recover of said steam-tug Restless, her engine, tackle, &c., and her said claimants the sum of five thousand seven hundred $\frac{45}{100}$ dollars and interest thereon.

And it is further ordered, adjudged and decreed that on the payment by the claimant of either vessel of the said one-half of said damages and costs, and interest thereon to date of payment, the proceedings of the libellants he stayed as to such vessel and her claimants for the collection of the residue until the return by the marshal of an execution unsatisfied against the claimant of the other vessel for the other half part of said amount, or until it shall otherwise appear that the
98 said libellants are unable to enforce or collect the other part of said damages, costs and interest against the claimants of the other vessel, by process from this court.

And it is further ordered, that unless this decree be fulfilled or satisfied, or proceedings stayed on appeal by filing security within ten days after service of a copy of this decree upon the proctors for the claimants, the stipulators on the appeal to this court for damages and costs cause the engagements of their stipulations to be performed or show cause within four days after the expiration of said ten days, or on the first day of jurisdiction thereof, or why execution should not issue against them, their goods, chattels, and lands.

Enter.

ALEX. S. JOHNSON,
Cir. J.

(Endorsed:) U. S. circuit court. Augustus B. Perry et al. vs. The Austrian ship Civilta, her tackle, &c., & The steam-tug Restless, her tackle, &c. Decree. Benedict, Taft & Benedict, lib'l'ts' proctors. Set'led Oct. 26, '77. A. S. J. U. S. circuit court. Filed Oct. 26, 1877. John I. Davenport, clerk.

99 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Friday the 15th day of March, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Samuel Blatchford, circuit judge.

AUGUSTUS B. PERRY & OTHERS, LIBELLANTS,
vs.
THE STEAM-TUG RESTLESS, HER ENGINE, &C.,
John G. Baker, claimant & appellant.

On reading and filing a certified copy of the final decree and order in the above entitled cause, on the twenty-sixth day of October, 1877, requiring the stipulators on the appeal to this court for damages and costs to cause the engagement of their stipulation to be performed or show cause within four days after the expiration of ten days after service of a copy of said decree on the claimant's proctors, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands, with an affidavit of service of a copy of said decree and order on Beebe, Donohue & Cooke, proctors for John G. Baker, the claimants of steam-tug Reatless, appellant herein, on the 15th day of February, 1878, and no cause being shown; now, on motion
100 of Benedict, Taft & Benedict, proctors for the libellants herein, it is ordered and decreed that a summary judgment be and the same is hereby entered against John G. Baker as principal, and William B. Hatch & Edward P. Hatch, the stipulators on the part of the steam-tug Restless, for the sum of seventeen thousand three hundred & twenty-three $\frac{83}{100}$ dollars, the amount of their said stipulation, and that the libellants have execution thereon to satisfy this decree.

SAM'L BLATCHFORD.

(Endorsed:) E. & A. D. 2, p. 300. United States circuit court for the southern district of New York. Agustus B. Perry & al. vs. The Steam-tug Restless, her tackle, &c. Final decree and summary judgment against stipulators. Benedict, Taft & Benedict, proctors for libel'ts. U. U. circuit court. Filed Mar. 15, 1878. John I. Davenport, clerk.

101 Circuit court of the United States for the southern district of New York.

AUGUSTUS B. PERRY, O. H. PERRY, JOHN Moseley, William G. Moseley, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. W. Gilman, libellants,
against
THE AUSTRIAN SHIP CIVILTA, WHEREOF CASS. Cas're Casulich is claimant, impleaded with the steam-tug Restless, whereof John G. Baker is claimant, appellant.

The above entitled cause came on for trial before the Hon. Alexander S. Johnson, late circuit judge of the United States in and for the southern district of New York, and in the second circuit, on or about the 15th day of December, 1875, on the appeal of the ship Civilta and her claimant from the final decree of the district court of the United States for the southern district of New York, made and entered on the 29th day of May, 1873, and on the appeal of the said steam-tug Restless and her claimant from the said decree.

Counsel for the libellants read the libel, and counsel for the claimants of the Civilta and the Restless read their respective answers, as
102 the same are contained in the apostles transmitted from said district court to said circuit court.

Counsel for libellants then put in evidence the testimony taken on behalf of the libellants in the district court as the same was contained in the said apostles, the counsel for the libellants reading the direct examination, and counsel for claimants reading the cross-examination.

Counsel for the claimant of the said ship Civilta and counsel for the claimant of the said steam-tug Restless then read the testimony taken on behalf of the said claimants respectively as the same was contained in the said apostles, the counsel for the said claimants reading the direct examination of the testimony put in by them respectively, and the counsel for the libellants read the cross-examination.

The counsel for libellants also put in evidence the coast survey chart of the East River west of Sands' Point.

And here the testimony was closed.

Counsel for the claimant of the said ship Civilta thereupon proposed on his behalf the following findings of fact and conclusions of law to be found by the court, viz:

103 *Findings of facts and conclusions of law proposed on the part of the claimants of ship Civilta, appellant.*

U. S. circuit court, southern district of New York, in the second circuit.

AUGUSTUS B. PERRY ET ALS., LIBELLANTS AND appellees,
vs.
THE AUSTRIAN SHIP CIVILTA AND THE STEAM-tug Restless, their tackle, &c., Casimer Cosulick et al., claimants and appellants.

FINDINGS OF FACTS.

On the part of the ship the same findings of fact are asked as are submitted on behalf of the tug, and, also—

1. That before and at the time of the collision mentioned in the libel in this action the ship Civilta had been and was in tow of the steam-
104 tug Restless, which took said ship in tow at New Haven, and towed her from the harbor of New Haven astern by a hawser 45 fathoms in length. That said ship was bound to the port of New York. That the master of said steam-tug was a licensed Hell Gate pilot. That before leaving New Haven harbor another licensed Hell Gate pilot boarded the said ship to pilot her from Sands' Point to the port of New York.

2. That when and after said tug and ship had reached Sands' Point the said tug continued to tow said ship astern and at such a distance that the Hell Gate pilot on the ship could not direct the movements of said tug.

3. That the course of said tug and ship was, at all times, before and at the time of the collision, the proper course for a steam-tug with a vessel in tow bound to the port of New York from Sands' Point, and was not changed.

4. That the schooner Magellan, mentioned in said libel, was discovered by those on board of said tug and said ship at a distance of from 600 to 700 yards, bearing from 1 to 1½ points on the starboard, and that said schooner passed said tug at a safe distance on the starboard side, and would have passed said ship also at a safe distance on the starboard side, but, before reaching said ship, said schooner changed her course and

sheered across the bows of said ship, striking the hawser and bringing herself under the bows of said ship and in collision with said ship.

5. That said schooner had no colored lights set and burning as required by law.

6. That said schooner did not exhibit a torch light on the point or quarter towards which the steam-tug was approaching her, as required by law; or otherwise comply with the regulations of law relating to vessels approaching each other.

105 7. That all the lights of the ship were "set and burning" as required by law.

8. That said ship was following in the wake of said tug, and that all her movements were controlled by the movements of the tug, and that nothing was done by those in charge of the ship to cause or contribute to the collision.

9. That the collision was caused solely by the fault of the schooner.

10. That as between the ship and the tug, if there was any fault, it was solely on the part of the tug.

CONCLUSIONS OF LAW.

1. That the schooner being in fault, neither the ship nor the tug are liable for the damages sustained by the schooner.

2. That inasmuch as the ship was in tow of the tug, which controlled and directed all her movements, no liability can attach to the ship for any fault of those in charge of the tug.

3. That those in charge of the tug having chosen to tow the ship by a hawser after passing Sands' Point, instead of going alongside of her, and being thus in a position when the Hell Gate pilot on the ship could not direct her movements in respect to the meeting and avoiding

106 approaching vessels, the said pilot was not responsible for such movements of the tug, so long as she was kept upon the proper course, and that in respect to the movements of the tug as to approaching vessels, those in charge of her are solely responsible.

4. That the libel should be dismissed as to the ship Civilta.

WILLIAM ALLEN BUTLER,
For the Ship Civilta, Appellant.

107 The counsel for the steam-tug Restless thereupon proposed on her behalf the following findings of fact and conclusions of law to be found by the court.

Proposed finding of fact on the part of the tug.

THE STEAM-TUG RESTLESS, HER TACKLE, IMpleaded, &c.,
ads.
AUGUSTUS B. PERRY ET AL.

On the morning of the twenty-second day of December, 1872, between two and three o'clock in the morning, the morning being pleasant, very cold, and with moon shining, the steam-tug Restless, having the ship Civilta in tow by a hawser forty-five fathoms in length, and which was the usual and proper mode of towing at that place, was bound from New Haven to New York. That the ship had a Hell Gate pilot on board, and whom she had taken on board at New Haven, and under whose special directions both the ship and tug were. That when the tug com-

menced towing the ship astern, the general order was given to the ship to follow the wake of the tug, and which was the only order given by the pilot after she commenced to tow her astern up to the time of
108 the collision. The wind was blowing from south sou'west to south-west, about three-knot breeze, and free for vessels bound east. The ship had three lights set and burning brightly, to wit, a red light on her port side, and a green light on her starboard side, and a white light hanging on her foremast to indicate that she was being towed. The tug had five lights set and burning brightly, to wit, red, green, and bow light, and two white lights aft, one above the other, to indicate that she had a vessel in tow. The ship had a competent man at the wheel, a competent and careful man on the lookout, the pilot, captain of the ship, and two others of the crew on deck, all engaged in looking out. The tug had a competent pilot at the wheel, and two men on the look-out. The course of the tug and ship when the schooner was first seen, and previous thereto, was southwest, and the course of the schooner was northeast, which were the proper courses, and on precisely parallel courses. That the said schooner had no proper lookout, and at the time of the schooner's change of course there was no one at the wheel of the schooner. The schooner had no lights burning when she hove in sight of the tug, nor up to the time of the collision. The schooner
109 was made from 600 to 700 yeards ahead of the tug, and from one point and a half to two points off the starboard bow of the tug. That the tug was made by those on the schooner when from half a mile to three-fourths of a mile off. That had the vessels kept their respective courses, the schooner would have passed the tug and bark from sixty to one hundred feet on the starboard side of the tug and ship. That the vessels did keep their respective courses until the said schooner was just passing the starboard quarter of the tug, when she suddenly luffed, crossing the course of the ship and striking the hawser and parting the same, and that the collision was caused by such change.

That as soon as the change was made on the part of the schooner the wheel of the tug was properly put hard-a-starboard, and the change was followed by the ship, and the course of both vessels was changed about one point before the collision. That as soon as the schooner commenced to change her course the bells of the tug were rung to slow and stop and back, and the orders promptly obeyed, and five whistles were instantly blown by the tug to call the attention of the schooner
110 to the fact that the tug had a vesssl in tow, and the schooner was hailed to keep off, but no attention was paid either to whistles or hail. That the man at the wheel of the schooner left the wheel just about the time the course of the schooner was changed.

That the value of the schooner was six thousand dollars.

That there is no sufficient evidence that the sum of $450 in money was lost with the vessel.

Finding of law proposed on the part of the tug.

First. It was the duty of the schooner to have kept on her course until a collision was probable, when she should have kept away.

Second. It was the right and the duty of the tug, taking into consideration the course and position of the respective vessels, to have kept her course until the schooner changed hers.

Third. That the proper course of the tug upon said change was to starboard her wheel.

111 Fourth. That the fault of the collision rests with the schooner, and was caused by her unjustifiably changing her course.

Fifth. That it was the duty of the pilot of the ship to have directed the course of the tug.

Sixth. That the libel should be dismissed as to the tug.

BEEBE, WILCOX & HOBBS,
Proctors for Claimants and Appellant, Steam-tug Restless, &c.

112 And thereafter, and on or about the 24th day of July, 1877, the said circuit judge having taken time to deliberate, filed in the office of the clerk of the said circuit court the following findings of fact and conclusions of law, made and signed by the said circuit judge, to wit:

113 U. S. circuit court, southern district of New York.

AUGUSTUS B. PERRY ET AL.
vs.
THE SHIP CIVILTA AND THE STEAM-TUG RESTLESS.

This cause having been heard upon the apostles and duly considered, I find as matters of fact as follows:

First. That the libellants were the owners of the schooner Magellan and carriers of a cargo of coal on board of her.

Second. That the night when the collision took place was clear and pleasant and lit by the moon.

Third. That the wind was light and a little to the west of south.

Fourth. That the schooner was sailing free with her booms off to port, and was making from two to three knots an hour.

Fifth. That the schooner had her lights properly set and burning brightly, as required by law.

114 Sixth. That the schooner had a competent man at her wheel and a competent lookout, and that each of them faithfully performed his duty.

Seventh. That the course of the schooner was about northeast and she made no change of course before the collision.

Eighth. That the ship was being towed from New Haven to New York by the tug at the end of a hawser about two hundred and seventy feet long astern of the tug.

Ninth. That the ship and tug were going between seven and eight knots an hour.

Tenth. That the ship and tug were seen by those on the schooner, bearing a little on the port bow of the schooner, and the schooner was seen by those on the ship and tug, bearing a little on their starboard bow.

Eleventh. That if the course of the schooner on one hand, and of the ship and tug on the other, had neither of them been changed, such courses would have crossed each other just ahead of the tug or between the tug and the ship.

115 Twelfth. That the tug did not slow her engine until the schooner got up to her and did not stop till the schooner was just striking the hawser.

Thirteenth. That the tug did not change her course until the schooner was up to her or nearly so; and that the tug and the ship had changed their course about a point to the south before the collision.

Fourteenth. That the ship struck the schooner on her port side, at about the fore rigging and sunk her.

Fifteenth. That the lights of the schooner were not observed by those on board the tug or by those on board the ship.

Sixteenth. That those on board of the tug and ship mistook the course of the schooner.

Seventeenth. That the tug was subject to the orders of the pilot in charge of the ship, but that she received no orders from the said pilot.

Eighteenth. That the collision occurred to the westward of Sand's Point.

116 Nineteenth. That the said collision was caused by negligence on the part of said ship and tug, and there was no negligence on the part of the schooner contributing to it.

Twentieth. That no lighted torch was shown upon the schooner on the approach of the tug upon the point or quarter to which she was approaching.

Twenty-first. That the damages sustained by the libellants by reason of said collision were the sum of $8,298.67.

And I further decide as conclusions of law:

First. That the tug and the ship are both to be considered as against the schooner to be a ship under steam.

Second. That it was the duty of the tug and ship to keep clear of the schooner.

Third. That there was fault on the part of both the tug and the ship, and that they are both liable therefor.

Fourth. That the fact found in the 20th finding was not in issue in this cause.

117 Fifth. That the libellants are are entitled to an affirmance of the decree of the district court.

ALEXANDER S. JOHNSON,
Circuit Judge.

(Endorsed:) Copy. Findings. Johnson, J. Original marked U. S. circuit court. Filed July 24, 1877. John I. Davenport, clerk. E. & A. D. No. 2, p. 300.

118 And thereafter and upon notice of the filing of the said findings of fact and conclusions of law, and on the 20th day of October, 1877, being before the entry of any judgment or decree thereon, the claimant of the said ship Civilta, filed in the office of the clerk of the said circuit court and served upon Benedict, Taft & Benedict, proctors for the libellants, and upon Beebe, Donohue & Cooke, proctors for the said steam-tug Restless, with notice of filing, the following exceptions separately to the findings of fact and conclusions of law made and filed by the said circuit judge as being unsustained by any proper or legal evidence, and being in opposition to the facts as proved by the claimant of the Civilta, and also the following exceptions separately to the refusals of the said judge to make the findings of fact and conclusions of law submitted and proposed to him on behalf of the respondents and which the respondents requested him to make as being fully proved by competent and relevant testimony.

119 *Exceptions filed on behalf of the claimant of the ship Civilta to the findings of fact and conclusions of law made herein.*

Circuit court of the United States for the southern district of New York.

AUGUSTUS B. PERRY AND OTHERS, LIBELLANTS and appellees,
against
THE AUSTRIAN SHIP CIVILTA, HER TACKLE, &c., whereof Casimer Cosulick is claimant and appellant, impleaded with the steam-tug Restless, her engines, &c.

The complaint of the said Austrian ship Civilta, her tackle, &c., hereby excepts to the findings of fact heretofore made and filed herein by the judge of the circuit court, in the manner and for the reason set forth as follows, to wit:

First. That he found that the schooner Magellan had her lights properly set and burning brightly, as required by law, in opposition to the request of the claimant of the Civilta, and to the testimony adduced, which showed that the said schooner had no colored lights set and burning, as required by law, which fact the said judge was requested to find and which he should have found.

120 Second. That he found that the said schooner had a competent man at the wheel and a competent lookout, and that each of them faithfully performed his duty, in opposition to the request of the claimant of the said ship and to the testimony adduced, which showed that the said schooner had no proper and vigilant lookout, and that her wheelsman deserted his post some time prior to the collision; which fact the said judge was requested to find and which he should have found.

Third. That he found that the said schooner made no change of course before the collision, in opposition to the request of the claimant of the said ship and to the testimony presented upon the trial, which showed that after the said schooner had passed the tug Restless in safety, and at a distance of from sixty to one hundred feet on the starboard side of the said tug, she suddenly and sharply luffed and sheared down upon the said ship, as though under the influence of a strong port helm; which fact the said judge was requested to find, and which he should have found.

121 Fourth. That he found that the ship and tug were seen by those on the schooner bearing a little on the port bow of the said schooner, in opposition to the request of the claimant of the said ship, and to the testimony presented upon the trial, which showed that the lights of the said ship and tug must have appeared over the starboard bow of the said schooner; which fact the said judge was requested to find, and which he should have found.

Fifth. That he found that if the course of the schooner on the one hand and of the ship and tug on the other, had neither of them changed, such courses would have crossed each other just ahead of the tug or between the tug and the ship, in opposition to the request of the claimant of the said ship, and to the testimony presented upon the trial, which showed that the said schooner was on a due northeast course and that the said tug and ship were on a due southwest course, and that therefore the courses of the said vessels were exactly parallel, and would not have crossed at all if the said schooner had held her course; which facts

the said judge was requested to find, and which he should have found.

122 Sixth. That he found that those on board of the ship and tug mistook the course of the schooner, and that he did not find, as requested by the claimant of the said ship, and as shown by the testimony presented upon the trial, that the said schooner had no colored lights set, as required by law, to indicate her presence and her course; which fact the said judge was requested to find, and which he should have found.

Seventh. That he found that the said collision was caused by negligence on the part of the ship and tug, and that there was no negligence on the part of the said schooner contributing to it, in opposition to the request of the claimant of the said ship, and to the testimony presented on the trial, which showed that there was no negligence upon the part of the ship, and that the tug was on a proper course for a steam-tug with a vessel in tow bound to the port of New York from Sand's Point, and that the said schooner was negligently navigated, without proper side-lights, and with an insufficient lookout, and incompetent officers;

123 which fact the said judge was requested to find out, and which he should have found.

Eighth. That he found that the tug was subject to the orders of the pilot in charge of the said ship, but that she received no orders from the said pilot in opposition to the request of the claimant of the said ship, and to the testimony as presented on the trial, which showed that when and after the said tug and ship had reached Sand's Point on their way from New Haven to New York, the said tug continued to tow said ship astern and at such a distance that the Hell Gate pilot on the ship could not direct the movements of the said tug, and that said ship was following in the wake of the said tug, and that all her movements were controlled by the movements of the tug, and that nothing was done by those in charge of the ship to cause or contribute to the collision; which facts the said judge was requested to find, and which he should have found.

And the said claimants of the said ship Civilta excepts to the *to*

124 *the* conclusions of law made by the said judge of the circuit court in the manner and for reasons set forth as follows, to wit:

First. That he held that the said tug and ship were to be considered as against the schooner, to be a ship under steam, instead of holding, as requested by the claimant of the said ship, and as he should have held, that inasmuch as the ship was in tow of the tug which controlled and directed all her movements no liability can attach to the ship for any fault of those in charge of the tug.

Second. That he held that it was the duty of the tug and ship to keep clear of the schooner, instead of holding, as requested by the claimant of the said ship, and as he should have held, that the schooner being in fault neither the ship nor the tug was liable for the damages sustained by the schooner.

Third. That he held that there was fault on the part of both the tug and the ship, and that they were both liable therefor, instead of holding, as requested by the claimant of the said ship, and as he

125 should have held, that the said schooner was in fault, and that as the ship was in tow of the tug, which controlled and directed all her movements, no liability can attach to the ship for any fault of those in charge of the tug.

Fourth. That he did not hold, as requested by the claimant of the said ship, and as he should have held, that those in charge of the tug,

having chosen to tow the ship by a hawser after passing Sands' Point, instead of going alongside of her and being then in a position where the Hell Gate pilot on the ship could not direct her movements in respect to the meeting and avoiding approaching vessels, the said pilot was not responsible for such movements of the tug, so long as she was kept upon the proper course, and that in respect to the movements of the tug as to approaching vessels those in charge of her were solely responsible.

Fifth. That he held that the libellants were entitled to an affirmance of the decree of the district court, instead of holding, as requested
126 by the claimant of the said tug, and as he should have held, that the libel should be dismissed as to the said ship Civilta.

New York, October 20th, 1877.

BUTLER, STILLMAN & HUBBARD,
Proctors for the Civilta.

127 And inasmuch as the said several matters produced and given in evidence on the trial in said circuit court and by the counsel for the said ship Civilta objected and insisted upon, and the said exceptions do not appear by the record of the decree of said circuit court, the counsel for the said ship Civilta has prepared and caused this bill of exceptions to be settled as a record thereof according to the form of the statute in such case made and provided and the course and practice of the court, and the said circuit judge, Alexander S. Johnson, having died, to be signed and ordered on file by the judge of the said circuit court.

SAM'L BLATCHFORD,
Circuit Judge.

128 (Endorsed:) Circuit court of the United States, southern district of New York. Augustus B. Perry and others, libellants, against the ship Civilta, whereof Cass. Casulich is claimant (impleaded with the steam-tug Restless), appellants. Bill of exceptions.

Please take notice that the within bill of exceptions will be proposed and submitted on behalf of the respondents to the honorable Samuel Blatchford, circuit judge, at the United States circuit court-room, in the post-office building in New York, on Tuesday, the 10th day of September, 1878, at 11 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for settlement.

New York, August 28th, 1878,

BUTLER, STILLMAN & HUBBARD,
Proctors for Civilta, 111 Broadway, N. Y.

U. S. circuit court.

Filed Sep. 24, 1878.

JOHN I. DAVENPORT,
Clerk.

Service of the within bill of exceptions and notice of settlement is hereby admitted.

N. Y., Aug. 27, 1878.

BENEDICT, TAFT & BENEDICT,
Proctors for Libellants.
BEEBE, WILCOX & HOBBS,
Proctors for Restless.

129 *Affidavit of service.*

United States circuit court, southern district of New York.

AUGUSTUS B. PERRY AND OTHERS, LIBELlants,
against
THE AUSTRIAN SHIP CIVILTA, &C., APPELLANT, impleaded with the tug Restless.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Albert H. Switzer, being duly sworn, says he is clerk in the office of Butler, Stillman & Hubbard, proctors for the appellant herein; that on the first day of November, 1877, at number sixty-eight Wall street, in said city, he served the annexed notice of appeal on Beebe, Wilcox & Hobbs, proctors for the tug Restless herein. Deponent made such service by delivering a copy of the same to, and leaving the same
130 with a *a* clerk in charge of the said proctors' office, during business hours.

A. H. SWITZER.

Sworn to before me this first day of November, 1877.
[L. S.] ADRIAN H. JOLINE,
Notary Public, King's Co. Cert. in N. Y. Co.

131 *Affidavit of service.*

United States circuit court, southern dist. of New York.

AUGUSTUS B. PERRY AND OTHERS, LIBELlants,
against
THE AUSTRIAN SHIP CIVILTA, &C., APPELLANT, impleaded with the steam-tug Restless, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Albert H. Switzer, being duly sworn, says he is clerk in the office of Butler, Stillman & Hubbard, proctors for the appellant herein; that on the first day of November, 1877, at number sixty-four Wall street, in said city, he served the annexed notice of appeal on Benedict, Taft & Benedict, proctors for the libellants herein. Deponent made such service by delivering a copy of the same to and leaving the same with
132 a clerk in charge of the office of said libellants' proctors, during business hours.

A. H. SWITZER.

Sworn to before me this first day of November, 1877.
[L. S.] ADRIAN H. JOLINE,
Notary Public, Kings Co. Cert. in N. Y. Co.

133 Circuit court of the United States for the southern district of New York.

AUGUSTUS B. PERRY, O. H. PERRY, JOHN Morely and others, libellants and appellees,
ag'st
THE SHIP CIVILTA, HER TACKLE, &C., CASIMIR Casulich, claimant, and the steam-tug Restless, her engine, &c., John G. Baker, claimant, appellants.

Please take notice that the ship Civilta, her claimants, &c., in above-

entitled action, appeal from the decree entered in said action in the circuit court of the United States for the southern district of New York, on the 26th day of October, 1877, in favor of the libellants and against the said ship, &c., to the Supreme Court of the United States.

134 New York, Oct. 31st, 1877.

BUTLER, STILLMAN & HUBBARD,
Proctors for the Ship Civilta.

To BENEDICT, TAFT & BENEDICT,
Proctors for Libellants.
BEEBE, WILCOX & HOBBS,
Proctors for the Tug Restless.
JOHN I. DAVENPORT, Esq.,
Clerk of the Circuit Court U. S. for Southern Dist. of N. Y.

(Indorsed:) U. S. circuit court, southern dist. of N. Y. Augustus B. Perry and others ag'st The Austrian ship Civilta, &c., appellant, impleaded with the steam-tug Restless. Butler, Stillman & Hubbard, proctors for appellant, 111 Broadway. Notice of appeal. U. S. circuit court. Filed Nov. 2, 1877. John I. Davenport, clerk.

135 *Affidavit of service.*

U. S. circuit court, southern district of New York.

AUGUSTUS B. PERRY AND OTHERS, LIBELlants & appellees,
against
THE AUSTRIAN SHIP CIVILTA, &C., &C., CLAIMant and appellant, impleaded with the steamtug Restless, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Albert H. Switzer, being duly sworn, says he is clerk in the office of Butler, Stillman & Hubbard, proctors for the appellant herein; that on the 5th day of November, 1877, at number 68 Wall street, in said city, he served the annexed petition of appeal to Supreme Court U. S. on Beebe, Wilcox & Hobbs, proctors for the tug Restless herein.

136 Deponent made such service by delivering a copy of the same to and leaving the same with a person in charge of said proctor's office during business hours.

A. H. SWITZER.

Sworn to before me this 5th day of November, 1877.
[L. S.] JOHN NOTMAN,
Notary Public, Kings Co., N. Y., with cert. in N. Y. Co.

137 *Affidavit of service.*

U. S. circuit court, southern district of New York.

AUGUSTUS B. PERRY AND OTHERS, LIBELlants & appellees,
against
THE AUSTRIAN SHIP CIVILTA, &C., &C., CLAIMant & appellant, impleaded with the steamtug Restless, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Albert H. Switzer, being duly sworn, says he is clerk in the office of

Butler, Stillman & Hubbard, proctors for the appellant herein; that on the 5th day of November, 1877, at number 64 Wall street, in said city, he served the annexed petition of appeal to Supreme Court U. S. on Benedict, Taft & Benedict, proctors for the libellants herein. Deponent made such service by delivering a copy of the same to and
138 leaving the same with a person in charge of said libellants' proctor's office during business hours.

A. H. SWITZER.

Sworn to before me this 5th day of November, 1877.

JOHN NOTMAN,
Notary Public, Kings Co., N. Y., with cert. in N. Y. Co.

139 Circuit court of the United States of America for the southern district of New York, in the 2d circuit.

AUGUSTUS B. PERRY, O. H. PERRY, JOHN Morely, William G. Morely, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. H. Gilman, libellants and appellees,
ag'st
THE AUSTRIAN SHIP CIVILTA, HER TACKLE, &c., whereof Casimer Cosulick is claimant and appellant, impleaded with the steam-tug Restless, her engine, &c., whereof John G. Baker is the claimant.

To the honorable the Supreme Court of the United States:

The appeal of Casimer Cosulick, the above-named claimant of the Austrian ship Civilta, and appellant herein, respectfully showeth
140 that heretofore and on the twenty sixth day of December, 1872, the above-named libellants filed their libel in the district court of the United States for the southern district of New York, against the said ship Civilta and the steam-tug Restless, in a cause civil and maritime, for the recovery of damages alleged to have been sustained by them to the schooner Magellan, her cargo and furniture, by reason of a collision with the said ship Civilta, the said ship being in tow of the said tug Restless, on the twenty-second day of December, 1872, near Hart's Island, in the East River, in the State of New York; that the said ship and said tug were arrested upon process issued upon said libel; that thereafter the appellant filed his claim to the said ship Civilta,
141 and later filed his answer on behalf of the said ship to the said libel, and such proceedings were thereupon had in the said cause that on the 24th day of January, 1873, an interlocutory decree was made by the said district court that the libellants recover against the ship Civilta and the tug Restless the damages by them, the said libellants, sustained, with their costs to be taxed.

That thereafter, and on the first day of February, 1873, the said ship was released from custody upon the claimant entering into stipulations, and afterwards such proceedings were had that on the twenty-ninth day of May, 1873, a final decree was made and pronounced by the said district court, wherein it was in substance adjudged that the said libellants recover their damages, assessed at the sum of eight thousand two hundred and ninety-eight $\frac{67}{100}$ dollars, besides their costs, which
142 costs had been taxed at three hundred and sixty-three $\frac{24}{100}$ dollars, amounting in all to the sum of eight thousand six hundred and

sixty-one $\frac{91}{100}$ dollars; and that the said ship Civilta and tug Restless, &c., be condemned therefor, and that the respective claimants of each of said vessels be responsible to the libellants for the said sum of eight thousand six hundred and sixty-one $\frac{91}{100}$ dollars and interest thereon; and it was further adjudged that the said damages be apportioned between the said ship and the said tug equally; but that on the return by the marshal of an execution unsatisfied against the claimant of either vessel for the half part of the said damages, or whenever it should appear that the said libellants were unable to enforce or collect
143 the half part of the said damages, &c., &c., against the claimants of either vessel by process from the said court, then the other vessel and her claimants to be liable and responsible therefor.

That thereafter, and after such final decree, and on the twenty-third day of January, 1874, the claimant of the said ship Civilta, your petitioner and appellant, duly appealed therefrom to the circuit court of the United States for the southern district of New York, in the second circuit, and the said cause was thereby removed to the said circuit court and there tried anew, and such proceedings were had in the said circuit court that afterwards and on the twenty-sixth day of October, 1877, the said circuit court made a final decree in the said cause, whereby it was adjudged and decreed that the decree of the said district court be in all things affirmed, and that the libellants recover against the
144 said ship Civilta and her claimant and the said tug Restless and her claimant the sum of eight thousand six hunderd and sixty-one $\frac{91}{100}$ dollars, with two thousand six hundred and fifty-seven $\frac{77}{100}$ dollars interest and eighty-one $\frac{25}{100}$ dollars costs, amounting in all to the sum of eleven thousand four hundred $\frac{20}{100}$ dollars, and that the said ship Civilta and the steam tug Restless be condemned therefor; and it was further ordered that the said damages be apportioned equally between the said ship and the said tug, and that the libellants recover one-half of the said damages and costs, to wit, five thousand seven hundred $\frac{45}{100}$ dollars, from the said ship and her said claimant and one-half from the said tug and her said claimant, but that on the return by the marshal of an
145 execution unsatisfied against the claimant of either vessel for the half part of the said damages, or whenever it should otherwise appear that the said libellants were unable to enforce or collect the half part of the said damages, &c., &c., against the claimants of either vessel by process from the said court, then the other vessel and her claimants to be liable and responsible therefor.

Wherefore the claimant of the said ship Civilta appeals from the whole of the said decree of the said circuit court to the Supreme Court of the United States and respectfully prays that the decree of the said circuit court, and the libel, answer, pleadings, depositions, testimony, evidence, exhibits, findings, and exceptions thereto, the findings, &c., proposed on behalf of the ship Civilta, and proceedings in the said
146 cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause, and that the said decree of the said circuit court and every part thereof as against the said ship Civilta, her claimant, &c., may be reversed, and a decree made dismissing the said libel, as against the said ship Civilta, with costs, or such other decree as to the said Supreme Court shall seem fit.

New York, November 1st, 1877.

BUTLER, STILLMAN & HUBBARD,
Proctors for ship Civilta, her Claimant, &c., Appellant.

147 (Indorsed:) U. S. circuit court, southern dist. of New York.

Augustus B. Perry and others, libellants & appellees, ag'st the Austrian ship Civilta, her tackle, &c., whereof Casimir Casulich is claimant & appellant, impleaded with the steam-tug Restless, &c. Petition of appeal to Supreme Court U. S. Butler, Stillman & Hubbard, proctors for appellant, 111 Broadway, N. Y.

Where is the bond and where is the citation?

S. B.

Nov. 1, 1877.

Filed Nov. 5, 1877.

148 U. S. circuit court, south. dist. of New York.

AUGUSTUS B. PERRY & AL.
agt.
SHIP CIVILTA & STEAM-TUG RESTLESS.

Justification of sureties on appeal in above cause on the part of the ship Civilta, this 5th day of November, 1877.

WILLIAM G. PARSONS, being duly sworn, deposes and says:

I reside at North Brunswick, Middlesex County, N. J. I am in the business of manufacturing snuff. I carry on that business at that place. I am in partnership with no one. I have lived there 20 days. I have lived 40 years there & in New Brunswick. North Brunswick is 3 miles from New Brunswick Depot.

149 I am on no bonds but this one, except a bond as a manufacturer. I think that bond is for $6,000.

I own five lots of ground in Brooklyn. I took them for a debt. They are on or near Classon Avenue. I think they are near Washington Ave. I think they cost me $2,400. They are worth $300 or $400 each. They stand in my name. No incumbrance on them. That is all that I own in this State. I own real estate in N. J. I own 10 lots in Elizabeth, unimproved property; that is, no buildings on them; streets are graded. They stand in my name. No incumbrance on them; owned them 5 or 6 years. I bought them on a foreclosure of mortgage,

150 at sheriff's sale. I foreclosed the mortgage myself and had to buy them in. They were valued at the time I bought at $500 a lot. I have no idea what they are worth now; probably $300 a lot.

I own property in the city of New Brunswick. I own three large factories near the depot at that place. They are on Nelson st., adjoining the railroad bridge. There is a jewelry factory in part of one of them. One of them is a shoe factory, & one is a paper manufactory. These are all in my own name. There is a mortgage on one of them of about $1,200. That is all the incumbrance on any of them. They adjoin each other; were built at different times. They are all brick, except a part of the paper-hanging factory, & that part is a frame building.

151 I built most of these buildings. I suppose at these times they are worth at least $30,000. They cost more than that to build, besides the lots. I should think I began the building of them about 10 years ago, & have built on to them as occasion required.

There are no judgments against me. I am on the bond in this case, on the appeal to the circuit court. I own other property in New Brunswick, on Livingston avenue. They are all vacant lots, except there is one house on them. They are all in my name. On one plot there is $2,000 mortgage, & on another plot there is a mortgage of the same

amount. There must be over 40 lots. I have 425 feet on the
152 Livingston ave. There are 8 lots in one place. Then, on the opposite side, I have 275 feet in another plot, & 140 feet in another plot. These number of feet are calculated on the fronts on the main avenue. The average size of a lot is 25 x 100. Some of these lots are much deeper than that. I have owned these lots probably, some of them 10 years, & some not so long. I suppose, take these lots altogegether, they are worth $20,000 these times.

I am on notes as endorser for, I suppose, about $15,000. I think they are all good. I have no notes of my own out except, I think, one for $600. I owe nothing in my business for stock or anything of that kind.

I have a large stock on hand. My homestead, where I live,
153 & cash on hand, & stock, are easily worth $50,000.

Mr. Slocovich is my son-in-law; no way connected with him in business.

Livingston ave. is, we think, the finest avenue in New Brunswick. It is south of the depot 5 or 6 blocks, and runs about right angles to George st. It is not built up much, but what buildings there are are first class.

WM. G. PARSONS.

Sworn to before me this 5 Nov'r, 1877.
[SEAL.]

WM. D. JONES,
Notary Public for Kings Co.,
Certified in N. Y. Co.

JOHN CHERTIZZA, one of the sureties in this action, being duly sworn, says:

I reside No. 499, 3d street, South Brooklyn, L. I., & do business
154 in New York, No. 5, South William st. I am a ship-wright. I have a yard, No. 18, India Wharf, Atlantic Dock. I am an owner of real estate, & own the house I live in, also 16 lots in 4th avenue. The house, I suppose, is worth $12,000, present time. There is $6,400 of mortgage on it. The 16 lots are worth $500 or $600 apiece. There are 10 avenue lots and 6 street lots. These lots are on 4th avenue, between 36 and 37th sts. There is $4,000 mortgage on them in two mortgages to Brooklyn City Railroad Co. They stand in my own name.

I am an American citizen, naturalized about 9 years ago. These lots are not improved, but the street is paved and graded.

I own stock in Produce Exchange building. I own one share.
155 The par value is one thousand dollars. I own, in company with Mr. Mortini, ½ interest in patent ballast locks. I own ½ the patent, & Mr. Mortini owns the other half. My half is worth $8,000. It stands in the name of Martini & Chertizza. That is all.

I am on one other bond besides one in this case, for between $500 & $600. I am on the appeal bond in this case, on the appeal to the circuit court.

I have five partners in my business. The company is The Maritius Grain Ceiling Co. It is not an incorporated company. Four of the partners are general partners, & share equally, & the other two are special partners. My interest is that on every $550 I get $100.
156 Four of us get that interest, & the other two get $75 each. The debts of the company are about $5,000. I owe, individually, about $400. I have no notes out in my own name, only the notes of the company, & they included in the $5,000 I have mentioned. There are no judgments against me that I know of. The stock of the company

consists of lumber & nails, & is worth about $20,000. My interest in that is about $3,800.

J. CHERTIZZA.

Sworn to before me this 5 day of Nov., 1877.
[L. S.] WM. D. JONES,
Notary Public for Kings Co., certified in N. Y. Co.

GEORGE SLOCOVICH, being duly sworn, says:

157 I reside in Brooklyn—107 Hicks st.—and do business in N. Y. —109 Pearl st.; my firm is Slocovich & Co.; William G. Parsons, jr., is the company; my interest in the firm is 80 per cent.; I own real estate in Brooklyn; it is on Closson ave., near where Mr. Parsons' is; I own 4 lots; I paid $700 for each lot; I have had them about 4 years I think; no incumbrance on them; stand in my name; I am an American; naturalized about three or four years ago; I own three lots in Livingston ave., New Brunswick, N. J., which I bought 4 or 5 years ago; I paid $1,000 a lot; no incumbrance on them; that is all the real estate I own.

158 I own no other property except household furniture in my house and some personal property; I am on 2 or 3 bonds in suits already of $500 or $600 each; I am on the bond on the appeal in this suit to the circuit court.

I own in 65 vessels; that is, I own stock in two associations that own 46 vessels; besides, I own in other vessels; my average interest in all these vessels is about $350; I have no notes out, nor am I an endorser on any; neither has my firm any notes out, nor is it endorser on any; my present firm has been in existence since January 1, 1877; I own 3 certificates of stock of the Produce Exchange, worth, nominally, $1,000 each, & 4 certificates of the Maratime Exchange, worth $50 each.

159 I own some government securities, two 10-40 bonds, $1,000 each; there are no judgments against me; my income is from $15,000 to $20,000 a year; our capital is about $20,000, 80 % is mine; my liabilities may be $1,500; the firm has none.

The real value of the Produce Exchange stock is not over $500 a share.

G. SLOCOVICH.

Sworn to before me this 5 Nov., 1877.
[L. S.] WM. D. JONES,
Not'y Pub. for Kings Co., cert. filed in N. Y. Co.

THOMAS QUIGLEY, one of the proposed sureties, being duly sworn, says:

160 I live at 18 King st., New York, & do business at 86 Pine st. as stevedore; my brother is in partnership with me; my brother and I are jointly interested in the business, but not equally; I have the largest interest; I own some real estate in Brooklyn—the house 15 Rapalye st.; it stands in my name; there is a mortgage of $4,500; that is all; I have owned the ground about 10 years, & built the house about 3 years ago; the house & ground is worth $9,000 or $10,000; the house cost about $7,000; it is a brick four-story house; I have no other real estate; I own in vessels, but all are in my brother's name but one; that is the Ralph Haywood, in which I own 1-64, & that stands in my name; that 1-64 is worth between 500 & 600 dollars; the Haywood is an American vessel; I have nothing else except claims that I have outstanding due to the firm of about possibly $3,000; my

161 own liabilities are not $1,000; the firm liabilities are not larger than that; neither I nor the firm have any paper out; that is, no notes nor endorsements; there are no judgments against me; I am on one bond for Ruger for, I think, about $1,500 or $2,000; that is all.

THOMAS QUIGLEY.

Sworn to before me this 14 Jan'y, 1878.

[L. S.]

WM. D. JONES,
Notary Public for Kings Co., Cert. filed in N. Y. Co.

162 U. S. circuit court.

Filed Jan. 15, 1878.

JOHN I. DAVENPORT, *Clerk.*

163 Circuit court of the United States, southern district of New York, in the second circuit.

AUGUSTUS B. PERRY, O. H. PERRY, JOHN Mosely, William G. Mosely, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. H. Gilman, libellants and appellees,
against
THE AUSTRIAN SHIP CIVILTA, HER TACKLE, &c., whereof Casimir Casulich is claimant and appellant, impleaded with the steam-tug Restless, her engines, &c., whereof John G. Baker is claimant.

Know all men by these presents that we, William G. Parsons, George Slocovich, John Chertizza, Thomas Quigley, are held and firmly bound unto the above named Augustus B. Perry, O. H. Perry, John Mosely, William G. Mosely, Ira Allen Lovejoy, George R. Emerson, Cal-
164 vin G. Peck, and O. H. Gilman in the sum of twenty-three thousand dollars to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the day of November, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas on the twenty-sixth day of October, one thousand eight hundred and seventy-seven, a final decree was rendered by the circuit court of the United States for the southern district of New York in the above entitled action, where by said decree it was ordered, adjudged, and decreed among other things that the above named libellants and
165 appellees herein recover against the Austrian ship Civilta, her tackle, &c., and Casimir Casulich, claimant thereof, and the steam-tug Restless, her engine, &c., and John G. Baker, claimant thereof, in all the sum of eleven thousand four hundred $\frac{90}{100}$ dollars, and that said Austrian ship Civilta, her tackle, &c., and said steam-tug Restless, her engine, &c., be condemned therefor.

And whereas said final decree was duly filed in the office of the clerk of the said circuit court of the United States for the southern district of New York, on the said twenty-sixth day of October, one thousand eight hundred and seventy-seven;

And whereas the above named claimant of the said Austrian ship

Civilta, appellant herein, has prosecuted an appeal to the Su-
166 preme Court of the United States, at the city of Washington, in the District of Columbia, from the said final decree of the said circuit court, that the same may be reversed as against the said Austrian ship Civilta:

Now, therefore, the condition of this obligation is such that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CASIMIR CASULICH, [L. S.]
By G. SLOCOVICH. [L. S.]
WM. G. PARSONS. [L. S.]
G. SLOCOVICH. [L. S.]
J. CHERTIZZA. [L. S.]

Sealed and delivered, and taken and acknowledged this 5th day of November, 1877, as to Wm. G. Parsons, George Slovich, & John Chertizza.

[L. S.] WM. D. JONES,
167 *Notary Public for Kings Co.; Cert. filed in N. Y. Co.*
THOMAS QUIGLEY. [L. S.]

& as to Thomas Quigley this 14 Jan'y, 1878.

[L. S.] WM. D. JONES,
Notary Public for Kings Co.; Cert. filed in N. Y. Co.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William G. Parsons, being duly sworn, deposes and says that he resides in North Brunswick, New Jersey, and that he is a freeholder, and is worth the sum of forty-six thousand dollars over and above his just debts and liabilities.

WM. G. PARSONS.

Sworn to before me this 5th day of November, 1877.

[L. S.] WM. D. JONES,
Not'y Public for Kings Co.; Cert. filed in N. Y. Co.

168 SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Chertizza and George Slocovich, being duly sworn, deposes and say that they reside in the city of Brooklyn, in the eastern district of New York, and that they are freeholders; and the said Chertizza that he is worth the sum of twenty thousand dollars over and above his just debts and liabilities, and the said Slocovich that he is worth the sum of twenty thousand dollars over and above his just debts and liabilities.

J. CHERTIZZA.
G. SLOCOVICH.

Sworn to before me this 5th day of November, 1877.

WM. D. JONES,
Not'y Public for Kings Co.; Cert. filed in N. Y. Co.

169 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Quigley, being duly sworn, deposes and says that he resides in the city of New York, in the southern district of New York, and that he is a freeholder, and that he is worth the sum of nine thousand dollars over and above his just debts and liabilities.

THOMAS QUIGLEY.

Sworn to before me this 14th day of January, 1878.
WM. D. JONES,
Notary Public for Kings Co., cert. filed in N. Y. Co.

The foregoing bond is approved as to form and amount and sufficiency of sureties.
January 15th, 1878.
SAM'L BLATCHFORD, *D. J.*

170 (Indorsed:) Circuit court of the United States for the southern district of New York. Augustus B. Perry, O. H. Perry, John Morely, and others, lib'ts and appellees, against The Austrian Ship Civilta, her tackle, &c., whereof Casimir Casulich is claimant and app't, impleaded with the steam-tug Restless, her engine, &c., whereof John G. Baker is claimant. Bond on appeal to the Supreme Court of the United States. Butler, Stillman & Hubbard, proctors for claimant of the Austrain ship Civilta, app'l't, 111 Broadway, N. Y. Approved as to form, sufficiency, and amount. U. S. circuit court. Filed Jan 15, 1878. John I. Davenport, clerk.

171 AUGUSTUS B. PERRY ET AL., LIBELLANTS,
ag'st
THE AUSTRAIN SHIP CIVILTA, &C., IMPLEADED with the steam-tug Restless, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Albert H. Switzer, being duly sworn, deposes and says that he is a clerk in the office of Butler, Stillman & Hubbard, proctors for the ship Civilta, &c., appellant; that on the 16th day of January, 1878, at number 64 Wall street, in the city of New York, he served the annexed citation on Benedict, Taft & Benedict, proctors for the libellant herein. Deponent made such service by delivering a copy of the same to and leaving the same with William D. Jones, managing attorney of the office of the said libellants' proctors, and at the same time exhibited
172 to him the original citation and obtaining from him an admission in writing of the due and timely service of the said citation, as appears endorsed on the said citation.

Deponent further says that on the same day, at number 68 Wall street, in the city of New York, he served the said citation on Bebee, Wilcox & Hobbs, proctors for the steam-tug Restless, impleaded with the ship Civilta herein, together with a notice to them of service of the said citation upon the libellants' proctors. Deponent made such service by delivering a copy of the said citation and a notice (whereof a copy is hereto annexed, marked A) to and leaving the same with Edward H. Hobbs, one of the proctors for the said steam-tug Restless, and at the same time exhibiting to him the said original citation and obtaining from the said proctor an admission in writing of the due
173 and timely service of the said citation and notice, as appears endorsed on the said citation.

Deponent further says that he is seventeen years of age and upwards.
A. H. SWITZER.

Sworn to before me this 17th day of January, 1878.
[L. S.]
C. J. SIMPSON,
Notary Public, N. Y. Co.

A.

To BEEBE, WILCOX & HOBBS,
Proctors for the tug Restless, &c.:

Please take notice that the foregoing is a true copy of a citation issued herein on the application and appeal of the ship Civilta, her claimant, &c., to the libellants in the above-entitled cause, and for the purpose therein set forth; and that the said original citation was this day served upon the said libellants by leaving a copy of the same with their
174 proctors, Benedict, Taft & Benedict, and at the same time exhibiting the said original to them; and you are hereby notified to be present at the return of the said citation if you shall deem it fit.

New York, January 16th, 1878.

Yours, truly,

BUTLER, STILLMAN & HUBBARD,
Proctors for the Civilta, &c.

175 AUGUSTUS B. PERRY, O. H. PERRY, John Morely, William G. Morely, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. H. Gilman, libellants and appellees,

ag'st

THE AUSTRIAN SHIP CIVILTA, HER TACKLE, &C., whereof Casimir Casulich is claimant and appellant, impleaded with the steam-tug Restless, her engines, &c.

By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to Augustus B. Perry, O. H. Perry, John Morely, William G. Morely, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck and O. H. Gilman:

Whereas Casimir Casulich, claimant of the Austrian ship Civ-
176 ilta, her tackle, &c., has, on the fifteenth day of January, one thousand eight hundred and seventy-eight, appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the southern district of New York, in the second circuit, on the twenty-sixth day of October, one thousand eight hundred and seventy-seven, and filed in the office of the clerk of the said circuit court on the same day, for the sum of eleven thousand four hundred $\frac{90}{100}$ dollars, including costs, which were taxed at eighty-one $\frac{35}{100}$ dollars, in favor of you and against the said ship Civilta and steam-tug Restless, their claimants, &c., and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington, in the District of Colum-
177 bia, on the second Monday of October next, in the year of our Lord one thousand eight hundred and seventy-eight, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district, in the second circuit, this 15th day of January, one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

SAM'L BLATCHFORD.

178 (Indorsed:) U. S. circuit court, southern district of N. Y. Au-

gustus B. Perry, O. H. Perry, and others, lib'ts & appellees, ag'st The Austrian Ship Civilta, whereof Casimir Casulich is claimant & appellant, impleaded with the steam-tug Restless, &c., &c. Citation. Butler, Stillman & Hubbard, proctors for Civilta, her claimant, &c., appellant, 111 Broadway, N. Y.

Due and timely service of the within citation on the libellants and appellees is hereby admitted.

New York, Jan'y 16, 1878.

BENEDICT, TAFT & BENEDICT,
Proctors for Libel'ee & Appellee.
BEEBE, WILCOX & HOBBS,
Proctors for Restless.

Due and timely service of the within citation, with notice of service of the same upon the libellants, is hereby admitted.

N. Y., Jan. 16th, 1878.

BEEBE, WILCOX & HOBBS,
Proctors for the Restless.

U. S. circuit court.

Filed Jan. 18, 1878.

JOHN I. DAVENPORT, *Clerk.*

179 Circuit court of the United States for the southern district of New York.

AUGUSTUS B. PERRY, O. H. PERRY, JOHN Moseley et al., libellants & appellees,
vs.
THE SHIP CIVILTA, HER TACKLE, &C., CASIMIR Casulich, claimant, and the steam-tug Restless, her engines, &c., John G. Baker, claimant, appellants.

GENTLEMEN: Please to take notice that the steam-tug Restless, her claimant, &c., in the above-entitled action, appeals from the decree entered in said action in the circuit court of the United States for the southern district of New York, on the 26th day of October, 1877,
180 in favor of the libellants and against the said steamtug, &c., to the Supreme Court of the United States.

New York, Nov. 2d, 1877.

Yours, &c.,

BEEBE, WILCOX & HOBBS,
Proctors for Restless.

To BENEDICT, TAFT & BENEDICT,
Proctors for L'bl'ts.
BUTLER, STILLMAN & HUBBARD,
Proctors for Civilta.
JOHN I. DAVENPORT,
Clerk U. S. Circuit Court for the Southern District of New York.

(Indorsed:) U. S. circuit court N. Y., southern district of New York. Augustus B. Perry and others, l'bl'ts & appellees, vs. The Steam-tug Restless, her engine, &c., appellant, impleaded with the ship Civilta. Notice of appeal. Beebe, Wilcox & Hobbs, proctors for Restless, 68

Wall st., N. Y. To John I. Davenport, clerk U. S. circuit court. U. S. circuit court. Filed Nov. 2, 1877. John I. Davenport, clerk.

181 U. S. Supreme Court.

Appeal from the circuit court to the Supreme Court.

THE STEAMTUG RESTLESS, HER ENGINES, &C., John G. Baker, claimant & appellant, impleaded with the Austrian ship Civilta, &c.,
vs.
AUGUSTUS B. PERRY, O. H. PERRY, JOHN Moseley, William G. Moseley, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. H. Gilman, libellants and appellees.

The appeal of John G. Baker, the above-named claimant and appellant, respectfully showeth:

That on the twenty-sixth day of December, 1872, the above-named libellants filed their libel in the district court of the United States for the southern district of New York against the steamtug Rest-
182 less, *their* engines, &c., and the Austrian ship Civilta, her tackle, &c., in a cause, civil and maritime, for the recovery of damages alleged to have been sustained by them to the schooner Magellan and a cargo of coal which was laden on board said schooner, by collision with the said steamtug Restless and ship Civilta, and that the said tug and ship was arrested upon process issued upon said libel, and said steamtug was discharged on your petitioner filing his claim and entering into stipulations, and your petitioner thereupon filed his answer to said libel, and that such proceedings were had in the said cause that on the 29th day of May, 1873, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libellants recover against the said steamtug Restless and
183 Austrian ship Civilta, their tackles, &c., the sum of eight thousand six hundred and sixty-one $\frac{91}{100}$ dollars damages and costs.

And that after such final decree your petitioner, as well as the claimant of the Austrian ship Civilta, duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court that afterwards, on the day of , the said court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed, with costs, and that the said appellees have execution, and that the stipulators cause their stipulations to be fulfilled, which said decree of the said circuit court is, as this
184 appellant is advised, erroneous and ought to be reversed. Wherefore this appellant appeals from the whole of said decree of said circuit court, or so much thereof as adjudges and condemns the said steamtug Restless to pay said decree or any part thereof, to the Supreme Court of the United States, and respectfully prays that the decree of the said circuit court, and the libel, answers, pleadings, depositions, and evidence, and proceedings in the said cause may be sent to the Supreme court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, or so much thereof as adjudges and condemns the said steamtug Restless to pay libellants' damages, or any

part thereof, may be reversed, and a decree made dismissing said
185 libel, with costs as to the steamtug Restless, or *or* such other decree as to the said Supreme Court shall seem just.

Dated New York, May 4th, 1878.

BEEBE, WILCOX & HOBBS,
Proctors for Appellant.

JOHN G. BAKER.
W. R. BEEBE,
Advocate.

186 (Indorsed:) U. S. circuit court s. d. of N. Y. The steamtug Restless, her engines, &c., impleaded, &c., vs. Augustus B. Perry & others, libellants & appellants. Petition of appeal. Beebe, Wilcox & Hobbs, proctors for Restless. To John I. Davenport, esq., clerk of U. S. circuit ct. U. S. circuit court. Filed May 4, 1878. John I. Davenport, clerk.

187 Circuit court of the United States of America, southern district of New York, in the second circuit.

THE STEAM TUG RESTLESS, HER ENGINES, &c., John G. Baker, claimant & appellant, impleaded with the Austrian ship Civilta, &c.,
vs.
AUGUSTUS B. PERRY, O. H. PERRY, JOHN Moseley, William G. Moseley, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. H. Gilman, libellants and appellees.

Know all men by the presents that we, Edward P. Hatch and C. P. Huntington, are held and firmly bound unto the above-named Augustus B. Perry, O. H. Perry, John Moseley, William G. Moseley, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. H. Gilman, in the sum of twenty-two thousand eight hundred and one $\frac{80}{100}$ dollars,
188 to be paid to the said appellees, for the payment of which, well and truely to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals and dated the fifteenth day of April, one thousand eight hundred and seventy-eight.

Whereas the above named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then
189 this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

EDWARD P. HATCH. [L. S.]
C. P. HUNTINGTON. [L. S.]

Sealed and delivered and taken and acknowledged this fifteenth day of April, 1878, before me.

[L. S.]

WM. C. McKEAN,
Notary Public, New York City & Co.

UNITED STATES OF AMERICA,
Southern District of New York, ss :

Edward P. Hatch and Collis P. Huntington, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of twenty-two thousand eight hundred & one $\frac{80}{100}$ dollars over and above all his just debts and liabilities.

EDWARD P. HATCH.
C. B. HUNTINGTON.

Sworn to this fifteenth day of April, A. D. 1878. before me.
[L. S.] WM. C. McKEAN,
Notary Public, New York City & Co.

190 This bond is in correct form, and the sureties are satisfactory. We, therefore, approve without prejudice to the objection that it is given too late.
April 23, 1878.

BENEDICT, TAFT & BENEDICT,
Lib'lts' Proctors.

(Indorsed:) U. S. circuit court, S. D. of N. Y. The Steam-tug Restless, her engines, &c., impleaded, &c., vs. Augustus B. Perry & others, libellants & appellees. Bond on appeal. Beebe, Wilcox & Hobbs, proctors for the Restless.

Approved May 4th, 1878.

SAM'L BLATCHFORD, *Judge.*

U. S. circuit court.

Filed May 4, 1878.

JOHN I. DAVENPORT, *Clerk.*

191 *Proof of service.*

Circuit court southern d's't of N. Y.

AUGUSTUS B. PERRY
against
THE STEAM-TUG RESTLESS ET AL., IMPLEADED with the ship Civilta, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss :*

David G. Rode, of the city New York, a clerk in the office of Beebe, Wilcox & Hobbs, being duly sworn, says that upon the 4th day of May, A. D. 1878, he served the annexed citation upon Benedict, Taft & Benedict, the proctors for the libellant in the above entitled action, by delivering a copy of said citation to and leaving the same with a person in and in charge of the office of said last named proctors, during the absence from said office of said proctors, and between the hours of
192 nine o'clock in the forenoon and six o'clock in the afternoon of said day.

DAVID G. RODE.

Sworn to before me this 4 day of May, 1878.
[L. S.] WM. H. RAFTERY,
Notary Public, N. Y. Co.

193 *Proof of service.*

Circuit court, southern dist. of N. Y.

AUGUSTUS B. PERRY
against
THE STEAM-TUG RESTLESS, IMPLEADED WITH the Ship Civilta, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

David G. Rode, of the city of New York, a clerk in the office of Beebe, Wilcox & Hobbs, being duly sworn, says that upon the 4th day of May, A. D. 1878, he served the annexed citation upon Butler, Stillman & Hubbard, the proctors for the ship Civilta, in the above entitled action, by delivering a copy of said citation to, and leaving the same with, a person in and in charge of the office of said last named proctors during the absence from said office of said proctors and between the hours
194 of nine o'clock in the forenoon and six o'clock in the afternoon of said day.

DAVID G. RODE.

Sworn to before me this 4th day of May, 1878.
[L. S.] WM. H. RAFTERY,
Notary Public, N. Y. Co.

195 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to Augustus B. Perry, O. H. Perry, John Moseley, William G. H. Moseley, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. H. Gilman:

Whereas John G. Baker, claimant of the steam-tug Restless, her engines, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Augustus B. Perry and others, against the steam-tug Restless, her engines, &c., and the ship Civilta, her tackle, &c., and has filed the security required by law; you are, therefore, hereby
196 cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and recieve what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the second circuit, the fourth day of May, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

SAM'L BLATCHFORD.

197 (Indorsed:) Augustus B. Perry et al. vs. The Steam-tug Restless, impleaded with the Ship Civilta, &c. Citation. Beebe, Wilcox & Hobbs, proctors for Restless, 60 Wall street, New York. Admit due service of the within. U. S. circuit court. Filed May 6, 1878. John I. Davenport, clerk.

198 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit,

do hereby certify that the foregoing pages, numbered from one to 197, inclusive, contain a true and complete transcript of record and proceedings had in said court, in the case of Augustus B. Perry, O. H. Perry, John Mosely, William G. Mosely, Ira Allen Lovejoy, George R. Emerson, Calvin G. Peck, and O. H. Gilman, libellants & appellees, against the Austrian Ship Civilta, her tackle, &c., whereof Casimir Casulich is claimant & appellant, and the steamtug Restless, her engine, &c., whereof John G. Baker is claimant, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York in the southern district of New York, in the second circuit, this 11th day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

(Indorsement on cover:) No. 278. The ship Civilta, her tackle, &c., Casimir Cosulich, claimant, appellant, vs. Augustus B. Perry et al. Filed 15th October, 1878. No. 296. The steamtug Restless, her engines, &c., John G. Baker, claimant, appellant, vs. Augustus B. Perry et al. Filed 19th October, 1878. S. New York, C. C. U. S.

Supreme Court of the United States.

OCTOBER TERM, 1880.

THE SHIP CIVILTA, HER TACKLE, &C., CASIMIR CASULICH, CLAIMANT, *Appellant*,

vs.

AUGUSTUS B. PERRY, *et al.*, *Appellees.*

No. 278.

THE STEAM-TUG RESTLESS, HER ENGINES, &C., JOHN G. BAKER, CLAIMANT, *Appellant*,

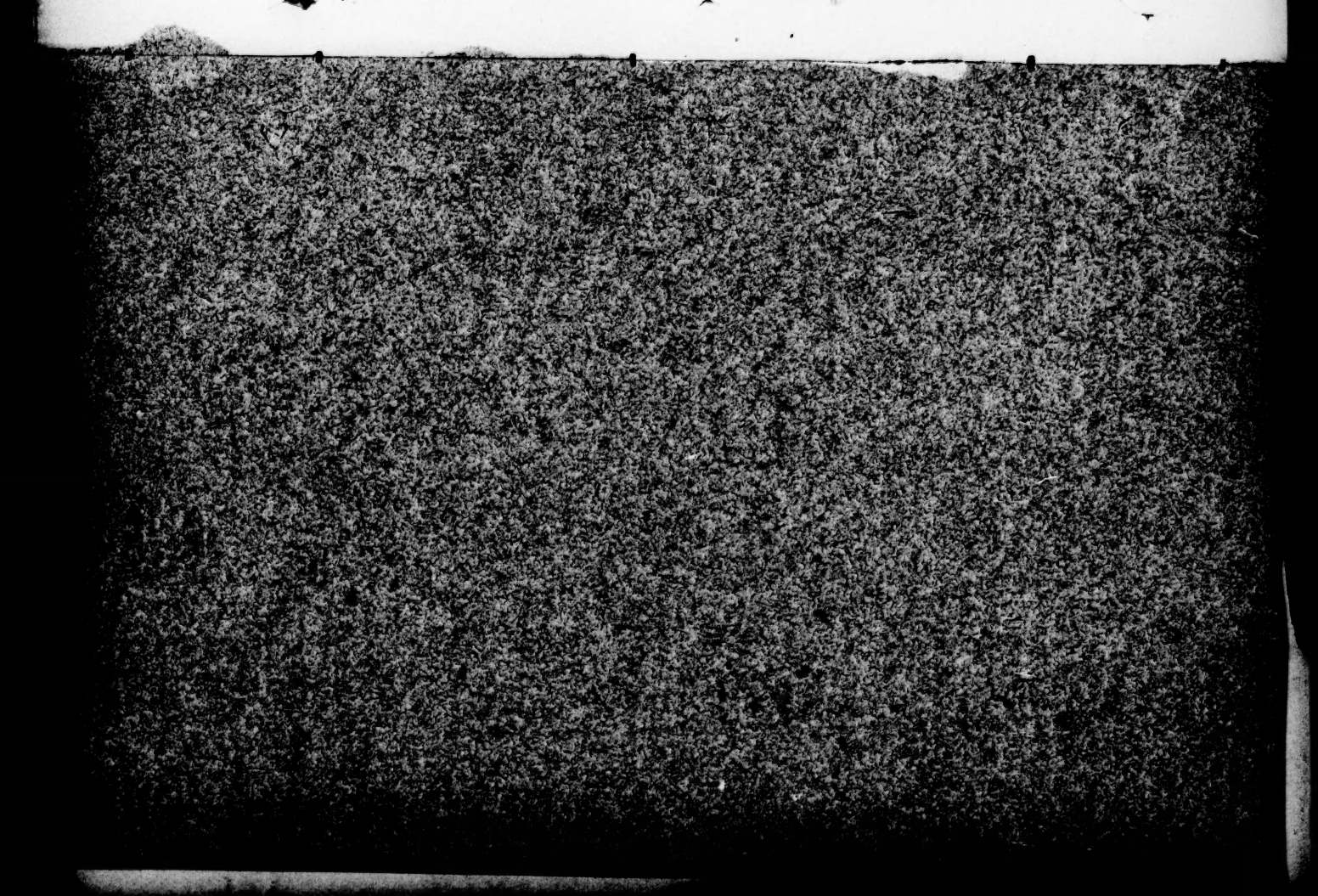
vs.

AUGUSTUS B. PERRY, *et al.*, *Appellees.*

No. 296.

Brief for the Owners of the Ship Civilta.

BUTLER, STILLMAN & HUBBARD,
Proctors for the Ship Civilta.
WILLIAM ALLEN BUTLER,
Advocate.



Supreme Court of the United States.

OCTOBER TERM, 1880.

THE SHIP CIVILTA, HER TACKLE, &c., CASIMIR CASULICH, CLAIMANT, *Appellant*,

vs.

AUGUSTUS B. PERRY, *et al.*, *Appellees.*

No. 278.

THE STEAM-TUG RESTLESS, HER ENGINES, &c., JOHN G. BAKER, CLAIMANT, *Appellant*,

vs.

AUGUSTUS B. PERRY, *et al.*, *Appellees.*

No. 296.

Brief for the Owners of the Ship Civilta.

Statement of the Case.

This cause comes up on separate appeals taken by the owners of the ship Civilta and the owners of the steam-tug Restless, from a decree of the Circuit Court of the United States for the Southern District of New York, adjudging both the ship and the steam-tug in fault for a collision with the schooner Magellan and awarding to the owners of the schooner for damages sustained thereby the sum of $11,400.80 to be paid in equal sums of $5,700.45 by the ship and her claimants and the steam-tug and her claimants. (See decree, Record page 47, fol. 96.)

The collision out of which the action arose took place on Long Island Sound, a few miles east of Throgg's Neck, December 22, 1872, between 2 and 3 o'clock a. m.

The schooner Magellan was on a voyage from South Amboy to Boston, with a cargo of coal.

The ship Civilta, an Austrian vessel bound on a voyage from Alexandria, Egypt, to New Haven and New York, had left New Haven December 22, 1872, at 4.50 p. m., in tow of the steam-tug Restless. (Rec. fol. 35.) The ship was towed by a hawser 270 feet long. (Rec. fol. 114.) At Sand's Point a Hellgate pilot came on board the Civilta. The pilot on the steam-tug got no orders from the pilot on the Civilta. (Rec. fol. 31.) The tug was towing the ship at the rate of about seven or eight knots an hour.

The schooner Magellan saw the tug and ship bearing a little on her port bow, and the schooner was seen by those on the tug and ship bearing a little on their starboard bow, and so that if the course of neither of the vessels had been changed the courses would have crossed each other just ahead of the tug or between the tug and the ship. (Findings, Rec. fol. 114.)

The tug did not slow her engine or change her course until the schooner got up to her or nearly so, and did not stop till the schooner was just striking the hawser (Ib. 115), the lights of the schooner not having been observed by those on the tug or ship.—(Ib.)

The Circuit Judge held that the tug and ship were to be considered, as against the schooner, to be a ship under steam; that it was the duty of the tug and ship to keep clear of the schooner, and that there was fault on the part of both the tug and ship, for which both were liable. (Record, p. 54, folio 116.) He accordingly affirmed the decree of the District Court awarding damages to the owners of the schooner against both the ship and the tug.

The ship and the tug, when first arrested, appeared by the same proctors, and the verified answers of the claimants of

the ship and of the steam tug respectively were filed by the same proctors. (See Record, p. 4, folios 8, 9; p. 6, folios 12, 13; p. 8, folio 16.)

The answers of the claimants of the ship and the steam tug are identical in their allegations, except that the answer on the part of the ship Civilta sets up that she was helpless and followed the wake of the steam tug. (See Answers, Record, pp. 4–8.)

The claimants of the steam tug expressly deny, in their verified answer, that the collision was caused by the fault of either the tug or the ship.

In the Circuit Court the steam tug was represented by the same proctors and advocate as in the District Court, but the ship was there represented by other proctors and advocate. And it was claimed on behalf of the tug that it was the duty of the pilot of the ship to have directed the course of the tug. (Rec., p. 53, fol. 111.)

On the part of the ship it was claimed that as the ship was in tow of the tug, which controlled and directed all her movements, the captain of the tug being himself a Hell Gate pilot (Rec., p. 14, fol. 29) no liability can attach to the ship for any fault of those in charge of the tug, and that as the tug, instead of going alongside of the ship, where the Hell Gate pilot could have directed her movements, kept ahead of the ship and thus controlled her movements, the ship should be exonerated from responsibility for the collision. (Rec., p. 51, fol. 105).

Assignment of Errors.

1. The Circuit Court erred in decreeing that the tug and ship were to be considered as against the schooner to be a ship under steam.

2. The Circuit Court erred in decreeing that there was fault in both the tug and ship and that both were liable therefor.

3. The Circuit Court erred in not decreeing, as prayed on behalf of the ship, that the steam tug was solely in fault for the collision.

POINTS.

FIRST POINT.—The ship was without fault, and the Circuit Court erred in holding her liable for any part of the damages.

1st. When a collision occurs between a vessel without fault, and a steam-tug with a vessel in tow, the tug must bear the whole loss in all cases where the tug is acting as the motive power, and where both the tug and her tow are at the time of the collision exclusively under the direction and control of the tug as respects the movements of the tow. (Sturgis *vs.* Boyer, 24 How., 110; The Ship John Fraser, 21 How., 184, 193).

2d. The vessel in tow of the tug is responsible jointly with the tug only where it appears that those in charge of the tug and tow jointly participate in the control and management of both vessels, and are shown to have been jointly negligent. (Sturgis *vs.* Boyer, *supra*; and see Opinion of Clifford, J., p. 122).

3. It is established that the ship Civilta was taken in tow by the tug, whose captain was himself a Hell-gate pilot, and who placed the ship at such a distance behind the tug that no order could be heard on the tug from the ship. Also that the course of the tug was the proper course at the point where the collision occurred. (Exception, folio 123). Under these circumstances, the fact that the ship was at the time of the collision in charge of a Hell-gate pilot on board of her does not fasten upon her any responsibility for the negligence of those in charge of the tug.

(*a.*) It is settled by the decisions of the Supreme Court in the China (7 Wall., 58) and the Merrimac (14 Wall., 199), that the fact that a vessel is in charge and and under control of

a pilot taken on board under the compulsory pilotage laws of the State, does not affect her liability for the consequences of a collision with another vessel, though the result wholly of the pilot's negligence, and the principle established by these decisions is that in cases of collision the loss shall be borne by the *offending vessel*, which the maritime law holds responsible. (See The China, 7 Wall., 53; The Merrimac, 14 *Ib.* 197).

(*b.*) If the ship in this case were proved to be the offending vessel, she would not have been absolved from liability by the fact that she was in charge of a pilot. But on the same principle, if she was not the offending vessel, the fact that she was in charge of a pilot should not prejudice her. The Court below held the ship liable for a moiety of the damages, on the ground that the pilot in charge of her controlled the movements of both the ship and tug—"the governing power being in the ship." But if, in fact, the governing power at the time of the collision was not in the ship, but the tow was actually in the exclusive direction and control of the tug, then the tug alone must be held responsible. (The Express, 1 Bltch., 365.)

(*c.*) The evidence shows that the tug took the Civilta in tow at New Haven; that the Hell Gate pilot boarded the ship at New Haven harbor (folio 30), but was not in charge until the vessel reached Sands Point (folio 123). The act of towing the ship astern was the act of the tug. When they reached Sands Point, and afterward, the tug and ship were on the proper course, S. W. It was the duty of the Hell Gate pilot to hail the tug if her course was not proper; but her course being proper, he was not responsible for a willful or mistaken deviation from that course, or for a neglect on the part of the tug to obey the rules of navigation.

In order to make the Hell Gate pilot responsible for the navigation of the tug with reference to approaching vessels, as well as for the course of the tug, the tug should have

stopped on reaching Sands Point, and come alongside of the ship. If she chose voluntarily to keep at such a distance that the Hell Gate pilot could not control her movements, and by her own fault a collision was produced, she became thereby the offending vessel, and the ship having committed no fault, cannot be made liable.

3d. In the cases where the vessel in tow has been held liable when in charge of a pilot, it has appeared affirmatively that he was actually in charge and directing the movements of the tug as well as the tow. (The Ensign, 3 Law R. Adm., 1869–72, 48; The Cleadon, 1 Lush, 254.)

The principle should be applied here which governed the decision in Smith *vs.* St. Lawrence Tow Boat Co., 21 Weekly Reporter, 569, and the Aracan 22 *Ib.* 927, where under the circumstances of the cases respectively the tug was held liable and the tow absolved from blame.

Second Point.—So much of the decree of the Circuit Court as holds the ship in fault should be reversed, and in no event should the ship be held liable to any greater extent than for a moiety of the damages.

BUTLER, STILLMAN & HUBBARD,
Proctors for the Ship Civilta.

WILLIAM ALLEN BUTLER,
Advocate.

SUPREME COURT U.S.
FILED
APR 16 1881
JAMES H. McKENNEY, Clerk

Points for Claimant of the "Restless."

SUPREME COURT OF THE UNITED STATES.

Nos. 278 & 296

THE STEAM-TUG RESTLESS, HER ENGINES, &c., JOHN G. BAKER, CLAIMANT, APPELLANT,

vs.

AUGUSTUS B. PERRY ET AL., RESPONDENT.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK.

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IN THE SUPREME COURT OF THE UNITED STATES.

THE STEAM-TUG "RESTLESS," her Engines, &c., JOHN G. BAKER, claimant,
Appellant,
AGAINST
AUGUSTUS B. PERRY ET AL.

Appeal from the Circuit Court U. S., So. Dist. N. Y.

POINTS FOR CLAIMANT OF THE TUG.

Statement of the Case.

The charge of the libel is that the schooner on her voyage eastward, having arrived at a certain point in the "East River" on a clear morning in December, was sunk by the ship then in tow of the "Restless," by collision.

The facts of the collision are thus set out: The schooner was heading *northeast*, her booms on the port side, making 2½ to 3 knots per hour. The tug was towing the ship at the rate of 8 or 9 knots per hour, and headed for the schooner, in which case her course would be *southwest;* until she was very near to the schooner, when "*she suddenly sheered to port, across the bows of the schooner, and just cleared her, but brought the ship down upon the schooner.*" (Libel, p. 2).

The answer of the tug (that of the ship is substantially the same) is, that the schooner was sailing northeast on a parallel course with that of the tug and ship (which was southwest), which, "if kept would have carried the schooner at a safe distance on the starboard side of the tug and ship; that the tug and ship kept steadily upon their course until the schooner had pas-

sed the tug, *when the schooner suddenly kept away to the right between the said tug and ship*, and although repeatedly hailed from said tug and ship, to starboard, she ran upon the hawser" and was sunk (Answer of tug, p. 15).

The pleadings, therefore, put in issue only two facts:

1st. The position of the vessels when they first came in sight, and which of the two kept on her course, or sheered across the course of the other.

No other issues of fact were raised.

The Evidence.

Of the five men on the schooner, two only, Tracy and Parker, were on deck and saw the vessels approach, and witnessed the collision.

TRACY gives the course of the schooner northeast, of the tug —"about southwest by south." He was at the wheel; made out the tug half or three-quarters of a mile off; "when within fifty or a hundred yards off, steamer changed her course and went across my bows to my starboard—to his port; when she changed her course she hid her port light; up to that time there had been no change in my course" (page 17). "Before tug changed, if she had kept on, I think she could have hit me near forward. I thought she would change and go under my lee" (page 22).

GEORGE PARKER, age 23, was on lookout. "Tug and ship from three-fourths to a mile off when I first saw them; saw lights of tug and ship; when I first saw them they were from one to two points on lee bow; I saw change in lights; change I saw was when she went across our bow; none before that. She hid her port light when she was fifty or seventy-five or a hundred yards off; the light at that time bore a point or more on our lee. I should say no change in our course from time I first saw lights till collision, by way Sand's Point and Execution lights bore" (page 23).

Both Tracy and Parker heard hail from the tug, after she passed the schooner's bow, to keep off (pp. 22, 23)

Opposed to these two witnesses were JAMES FRANKLIN, pilot and acting captain of tug, experienced in navigation: was at the wheel of the tug; was steering southwest by compass, who says: That when he made out the schooner she was seven hundred yards off, and one or one and a half points on his star-

board bow; moon shining brightly. Saw her sails and shape of her; saw no lights on her from time I first saw her till she was sunk. I should judge she was heading about N. E. I did not lose sight of her from time I first saw her till collision. She passed to right of me sixty to one hundred feet off of me. She was then changing her course as she passed me; before that time she was going N. E. I was steering S. W.; I had hold of wheel all the time; I made no change from the time I made schooner until she passed me (page 29.)

ALEXANDER BANTA, Hell Gate pilot in charge of the ship (at page 32).

GRAFTON MILLIKEN, aged 19, deck hand on the "Restless" (page 33).

JOSEPH VALCICH, captain of the ship, (page 36).

DIK, seaman on "Civilta" (page 39).

GEORGE ROSA, seaman on "Civilta," and

STANGER, first officer of "Civilta," who were all watching the approach of the schooner, prove in substance the same facts.

Seven witnesses for defense testify in substance that the vessels were approaching each other on parallel courses, which, had they continued, would have passed each other in safety; that the schooner, having passed the tug, suddenly sheered toward the hawser, and though warned to keep off, struck it.

All agree that the wind was about south, that the schooner was sailing northeast, with mainsail, foresail, jib, flying jib, and main-gaff-topsail set; her foretopsail and outer jib were not set. *Her booms were on the port side.* "Main boom out as far as sheet would let it" (page 25).

Tracy, at the wheel of the schooner, admits that while passing the tug he left the wheel and went to call the men below (page 21.)

There were no special findings of fact in the District Court. The ship and tug were under the command of Banta, the Hell Gate pilot. He took charge at Sand's Point (page 33). Went on board in New Haven Harbor (page 31). No orders were given by him, though he was near the wheel all the time after leaving Sand's Point, except the general order for the ship to follow in the course of the tug.

Upon the evidence certain findings of fact were made by the Circuit Judge. They are 21 in number, (see pp. 113–116).

The case was argued in the Circuit Court, at the December Term, 1875 (page 45). The opinion of affirmance was filed 24th July, 1877.

The "ship and tug" was declared to be in fault, and the damages were apportioned one-half to each.

Errors Relied Upon.

FIRST. That the eleventh and sixteenth findings were of facts not in issue. There was no evidence to sustain them, and they are founded upon mistake or misapprehension of the courts below.

That the nineteenth finding of fact was a mere conclusion from the eleventh and sixteenth findings.

SECOND. That the decree is erroneous in this, that it erroneously and wrongfully adjudges the ship and the tug liable for the damages to the schooner.

That it erroneously and wrongfully apportions the damages and decrees payment of a portion thereof by the tug, when the tug should not have been held liable for any portion of said damages.

POINTS OF LAW.

First.

Giving full effect to the rule adopted in the "Abbotsford" (VIII. Otto 440) and in other cases, that the findings of facts in the Circuit Court are conclusive and will not be re-examined here, it is respectfully suggested that that rule ought to be restricted to facts put in issue by the pleadings; and that where a theory is adopted by the Circuit Court, not presented by either the libel or the answers, and findings are made in accordance with that theory by mistake or by the assumption of a fact which does not exist, such findings are not legal and may be examined or corrected here.

The essential fact put in issue by the libel and answer is, *which of these vessels changed her course and crossed that of the other?* The vessels approaching each other either head on, or on parallel courses.

There is no finding of this fact by the District or Circuit Court. But the eleventh finding states that the vessels were approaching each other upon courses which would have crossed each other just ahead of the tug or between the tug and the ship; and the sixteenth finding states that those on board the "tug and ship" mistook the course of the schooner.

This fact was not in issue. The testimony was not taken in relation to it, and it appears to have been found upon what is claimed by the appellants to be a manifestly erroneous assumption of the effect of a certain manœuver.

It is, therefore, claimed by the appellants that the two findings, and the theory upon which alone they can be maintained, are open to examination here.

If they are open, we claim, first—

That the testimony upon the issuable fact, *i. e., which vessel changed her course*, is overwhelmingly against the schooner. There are at least six witnesses all watching the approach of the schooner in a bright moon-lit night—all competent seamen—who testify that after she passed the tug, she luffed sharply across the course of the tug and the ship; and, although the whistle was sounded, and the officers of the tug shouted to the schooner to keep off, no effort was made to do so, and the collision resulted—against two who testify that the tug sheered across the bow of the schooner.

There is the admitted fact that the man at the tiller of the schooner left it just as she had passed the tug, and went to call the men below.

The effect of thus leaving the tiller, the schooner sailing northeast with the wind south with all her sails set and all her booms off to port, would necessarily and inevitably be to cause her to sheer sharply to starboard across the course of the ship and under the stern of the tug; and this is exactly what the six witnesses testify took place.

The Court, as we claim, erroneously assumed that the effect of leaving the wheel would be directly the reverse, and would cause the schooner to go to port by falling off with the wind; and, therefore, that "the change attributed to the schooner was a deliberate change made by porting to luff into the wind" (see Opinion, page 64).

Therefore a very ingenious theory not presented by the pleadings is assumed, which makes the courses of the two vessels

approaching each other in a narrow strait, cross each other, and disposes of the positive testimony of six witnesses testifying to a movement which took place under their own eyes.

The appellant claims that this error is so manifest and palpable that it ought to be corrected here, and that the rule laid down in the "Abbotsford" does not prevent this Court from making the correction.

Second.

The tug was not in fault and ought not to be charged with any portion of the damages. The question of her liability to contribution appears not to have been considered by the Circuit Judge, no reference to it appearing in his opinion.

FIRST. The schooner did not collide with the tug. The tug passed her in safety. The whole damage was caused by the ship. Had the ship been properly navigated there would have been no damage.

The ship caused the damage, and should be held primarily liable to the schooner for the consequences.

The tug would not have been liable for injury to the ship because she was under the ship's control. In any view of the case she ought not to be held liable to the schooner except on failure of the ship to pay the damages.

The case cited by the District Judge from Mitchell's Maritime Register was against the tug and not against the tug and the tow. It may well be that when the tug is considered part of the tow she may be responsible to the injured vessel, when, as between the tug and tow, the latter only was in fault.

No question is made that the tug was subject to the orders of the pilot in charge of the ship. The pilot went on board the ship in New Haven harbor before she was taken in tow, for the purpose of piloting the ship through Hell Gate into New York harbor. He saw her taken in tow on the hawser. He made no objections, gave no orders. At eleven or twelve o'clock he came on deck, and at Sand's Point took the command. He says (at page 33): "It was my place to hail the tug if her course was not suitable. I gave no direction to tug, not close enough to give it. I was pilot of the ship from Sand's Point."

Great weight is given by the District Court to this statement of the pilot, that he was not near enough to the tug to give it orders. The conclusion that the tug is liable to contribution rests substantially upon this statement (see Opinion, page 65).

This statement is erroneous.

The pilot was near enough to have given orders. He stated that he heard the five whistles of the tug, "and saw schooner luffing sharp, and *heard hail to keep off;*" "after I heard whistles, I heard hail from the tug boat telling him to keep off; I've got ship in tow."

The captain of the ship, who did not understand English, and therefore does not give the words used, states: "Sheer of schooner was quick; when schooner changed, tug blew five whistles, and hailed something to schooner."

The fact not being in issue, the other witnesses on the ship were not questioned in relation to it.

The wind was very light and not directly ahead, and it is obvious that if the pilot could hear words spoken from the tug to the schooner, and distinguish them perfectly, he could have given directions to the tug, to port, or starboard.

The point of distance, then, should be eliminated from the case, and the rule should be the same as it would have been had the ship been alongside.

As the tug was on the regular course, her officers knew that they were under the pilot's command, and the pilot was at the ship's wheel watching the courses of both the tug and the approaching schooner, it is certain that the tug was where the pilot chose to have her, on a course which was satisfactory to the pilot, and that if the tug had changed her course without orders and a collision had resulted, the tug would have been guilty of disobedience.

SECOND. It is stated in the opinion of the District Judge, that it was the privilege and duty of the tug to be placed alongside of the ship (see page 65).

There is no proof to sustain this proposition, nor is that fact material; there is no claim that the pilot desired or attempted to give any orders, or that he would have given any had the ship been alongside the tug. All the proof tends to show that he was satisfied with the course of the tug and believed it to be right.

It seems to be the general rule that where a tug is employed

to move a vessel, she places her motive power at the service of the tow, and is completely under the command and in the control of its officers.

Both vessels are taken as one, and the same rules apply which would govern if the motive power was on board the tow.

The rule is thus stated in the case of the "Mayby and Cooper" (XIV. Wallace, 211): "The tow is alone responsible where the tug is employed as the mere motive power to propel the tow from one point to another, and both vessels are under the exclusive control and management of the officers and crew of the tow.

To the same effect are the cases of

Sturgis vs. Boyer, XXIV. How, 121, and *The Express*, decided by Justice Nelson, 1 Blatch., 368.

Cases in which the tug has been held to contribution are exceptional. They all involve the joint participation of the officers of both vessels in their control and management and negligence on the part of both vessels, neither being bound to obey the orders of the other.

See cases before cited.

In this case there was no such joint participation, control or management. It is not disputed that both vessels were in command of the pilot, who, for the time, was master of the ship, and who had assumed command for the purpose of piloting her to the end of the voyage.

It would be imposing a singular responsibility upon the officers of this tug in such a case to require them to disobey the presumed order of the pilot and change the course of the vessel while acting under the pilot's orders and he was in actual command.

Third.

On the findings the tug is not liable to contribution.

There is no finding of any participation by the tug in the control of the two vessels.

There is no finding that she was in fault, or that her course

was changed or that her officers assumed any responsibility until the schooner was up to her, when, without such change, a collision was assumed to be inevitable.

Throughout the case, the tug and ship are treated as a single vessel, except when separation became necessary, as in the first conclusion of law, where "the tug and the ship" are both mentioned. The same expression is used in the thirteenth finding of fact, where also "the tug and the ship" are mentioned.

In the ninth, tenth, eleventh, sixteenth and nineteenth findings of fact, and the second conclusion of law, "*the tug and ship*" are treated as one vessel under steam.

The nineteenth finding of fact that the collision was caused by negligence "on the part of the ship and tug," does not impute negligence in the management of the tug. It is quite consistent with the seventeenth finding that "the tug was subject to the orders of the pilot of the ship," and that he was negligent in failing to change the course of the two vessels.

There is no finding that the distance was so great that directions could not be given, and such a finding would have been against evidence.

Upon the authorities, the tug is not liable to contribution in the absence of a finding *of the fact* that she participated affirmatively in the faulty navigation which resulted in the collision.

It is respectfully claimed the tug was not in fault, and that the decree of the Court below subjecting her to contribution was erroneous and ought to be reversed.

L. E. CHITTENDEN,
Counsel for Tug "Restless."

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Supreme Court of the United States.

THE SHIP "CIVILTA," HER TACKLE, &c., *Appellant,* *vs.* AUGUSTUS B. PERRY, *et al.*, *Libellants.*	)	278.
THE STEAMTUG "RESTLESS" HER TACKLE, &c., *Appellant,* *vs.* AUGUSTUS B. PERRY, *et al.*, *Libellants.*	)	296.

BRIEF FOR APPELLEES.

These are appeals by the respective owners of the ship and steamtug from a decree rendered in the Circuit Court for the Southern District of New York, against them, in a suit for collision, brought against the two vessels in the District Court for that District, by the libellants and appellees, who were owners of the schooner "Magellan."

Dec. 26, 1872.—Libel filed.

Jan. 24, 1873.—Interlocutory decree against both vessels.

May 29, 1873.—Final decree against both vessels.

APPEAL TO CIRCUIT COURT.

Oct. 26, 1877.—Decree of Circuit Court against both vessels.

Facts of the Collision.

The schooner "Magellan," on the night of December 22d, 1872 (Libel, fol. 1), was bound from South Amboy to Boston, with a cargo of coal, and was sunk by a collision with the ship "Civilta," then in tow of the tug "Restless," near Harts Island and to the westward of Sands Point (18th Finding, fol. 115.)

The night was a clear, pleasant moonlight night; the wind was light, a little to west of south, and the schooner was sailing about north-east, and making about three knots an hour. She had her lights properly set and burning brightly; she had a competent lookout and a competent wheelsman, each of whom faithfully performed his duty; and she made no change of course before the collision (Findings 1 to 7, fols. 113, 114).

The ship was being towed by the tug at the end of a hawser 270 feet long, and at the rate of between 7 and 8 knots an hour (Findings 8 and 9).

The courses of the schooner and of the tug and ship were slightly crossing, so that if neither course had been changed the courses would have crossed just ahead of the tug, or between her and the ship (Findings 10 and 11).

The tug did not slow her engine till the schooner had got abreast of her, and did not stop till the schooner was just striking the hawser, and did not change her course till the schooner was up to her or nearly so, and

then changed only a point before the collision, in which the ship struck the schooner on the port side and sunk her (Findings 12, 13 and 14).

The lights of the schooner were not observed by those on the tug or those on the ship, and each of the vessels mistook the course of the schooner (Findings 15 and 16).

The tug was subject to the orders of the pilot in charge of the ship, but she received no orders from the pilot (Finding 17).

And the collision was caused by negligence on the part of the ship and tug, and there was no negligence on the part of the schooner contributing to it (Finding 19).

POINTS.

First.—The finding of law that the tug and ship are to be considered as against the schooner to be a ship under steam was correct. Such has been the decision of every Court in every case in which the question has come up for decision since the adoption of the Rules for avoiding collisions.

"The principle, that two vessels in the relative positions of the "American" and the "Syria" (the "Syria" was in tow of the "American"), constitute in intendment of law, at least so far as cases of collision are concerned, one vessel, has been decided."

The "American" and the "Syria," 2 Asp., Mar. L., Cases, N. S., p. 357.
See the case of the "Zenobia" and the "Zephyr," id. p. 352, note.
The "Cleadon," Lushington, 158.
The "Herbert Manton," 14 Blatch., 37.
The "C. F. Ackerman," 9 Ben., 179.
The "Nabob," 1 Brown, 123.

Second.—The second finding of law follows as a necessary conclusion from the first.

By Rule Twenty, it is the duty of a steam vessel to keep out of the way of a sailing vessel.

It was therefore the duty of the tug and ship, considered as a steam vessel, to keep out of the way of the schooner.

Third.—The third finding of law follows from the findings of fact, as well as from the two previous findings of law.

a. There was fault on the part of the tug, because (1) those on board of her did not observe the lights of the schooner and mistook the course of the schooner, which shows that there was a faulty lookout; and (2) although the course of the ship and tug was such as to cross the course of the schooner so that there was danger of collision, the tug made no change of course till the schooner was up to the tug or nearly so; and (3) because the tug, under those circumstances, did not stop till after she had reached the line of the schooner's course; and (4) because, according to the 19th finding, the collision was caused by negligence on the tug, and there was no negligence on the part of the schooner contributing to it.

b. There was fault on the part of the ship: (1) in that those on board of her did not observe the lights of the schooner and mistook her course, thus showing a faulty lookout on her; (2) in that no orders were given by the pilot on the

ship to the tug, which was subject to his orders, but the tug was allowed to continue her faulty navigation without any order to stop or to change her course till the collision; and (3) in that the collision was caused by negligence on the part of the ship, without any contributory negligence on the part of the schooner.

c. There being fault on the part of both the tug and the ship, of course they are liable therefor.

Fourth.—The decree of the Circuit Court should therefore be affirmed with costs, and with damages for the delay.

BENEDICT, TAFT & BENEDICT,
Proctors for Libellants and Appellees.

R. D. BENEDICT,
Advocate.